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Investigation
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: *for* Christian Marsh *ST*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Investigation of Prestressed Concrete Steel Rail Tie Wire from
Thailand

I. Summary

We analyzed the comments of the interested parties in the antidumping duty (AD) investigation of prestressed concrete steel rail tie wire (PC tie wire) from Thailand. As a result of this analysis and based on our findings at verification, we made changes to the margin calculations for the respondent in this case, The Siam Industrial Wire Co., Ltd. (SIW). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation on which we received comments from parties.

1. Request to Apply Adverse Facts Available for the Final Determination
2. Particular Market Situation Allegation
3. SIW's Reported Cost Allocation Methodology
4. General and Administrative (G&A) Expenses
5. Calculation of Credit Expenses for U.S. and South African Sales
6. Calculation of Indirect Selling Expenses for U.S. Sales
7. Use of Average-to-Average Price Comparisons

II. Background

On December 12, 2013, the Department of Commerce (the Department) published the preliminary determination in the less-than-fair-value investigation of PC tie wire from Thailand.¹ The period of investigation (POI) is April 1, 2012, through March 31, 2013.

¹ See Prestressed Concrete Steel Rail Tie Wire from Thailand: Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination, 78 FR 75547 (December 12, 2013) (Preliminary Determination).



We invited parties to comment on the preliminary determination. We received comments and rebuttal from the petitioners² and SIW in March 2014. Based on our analysis of the comments received, as well as our findings at verification, we changed the weighted-average margins from those presented in the preliminary determination.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.³ Therefore, all deadlines in this proceeding have been extended by 16 days. If the new deadline falls on a non-business day, the deadline will become the next business day. Thus, the revised deadline for the final determination in this investigation is April 28, 2014.

III. Scope of the Investigation

The product covered by this investigation is high carbon steel wire; stress relieved or low relaxation; indented or otherwise deformed; meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (ASTM) A881/A881M specification; regardless of shape, size or alloy element levels; suitable for use as prestressed tendons in concrete railroad ties (PC tie wire). High carbon steel is defined as steel that contains 0.6 percent or more of carbon by weight.

PC tie wire is classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7217.10.8045, but may also be classified under subheadings 7217.10.7000, 7217.10.8025, 7217.10.8030, 7217.10.8090, 7217.10.9000, 7229.90.1000, 7229.90.5016, 7229.90.5031, 7229.90.5051, 7229.90.9000, and 7312.10.3012. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

IV. Scope Comments

In conjunction with the Preliminary Determination, the Department modified the scope of the investigation by revising the phrase “meeting at a minimum the American Society of Testing Materials (ASTM) A881/A881M specification” to “meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (ASTM) A881/A881M specification,” and by including two additional HTSUS numbers.⁴ No interested party commented on this modification of the scope. Therefore, we made no changes to the scope language as stated in the Preliminary Determination.

² The petitioners in this investigation are Davis Wire Corporation and Insteel Wire Products Company.

³ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013).

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Modification Requests” (December 5, 2013).

V. Margin Calculations

We calculated constructed export price (CEP) using the same methodology stated in the Preliminary Determination, except as follows:

1. We recalculated U.S. credit expenses using an interest rate based on Federal Reserve rates. See Comment 5, below, and the memorandum entitled “Final Determination Margin Calculation for The Siam Industrial Wire Co., Ltd.,” dated April 28, 2014 (Final Determination Calculation Memo).
2. We recalculated U.S. indirect selling expenses. See Comment 6, below, and Final Determination Calculation Memo.

We based normal value (NV) on SIW’s sales to South Africa as described below. Also see Comment 2, below.

In accordance with section 777A(d)(1)(A)(i) of the Tariff Act of 1930, as amended (Act), we compared weighted-average CEPs to POI weighted-average NVs. In accordance with section 771(16) of the Act, we considered all products produced and sold by SIW in the comparison market during the POI that fit the description in the “Scope of the Investigation” section of the accompanying Federal Register notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the comparison market, where appropriate. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we matched foreign like products based on the physical characteristics reported by SIW in the following order of importance: diameter, tensile strength, and carbon content.

VI. Normal Value

A. Comparison Market Sales

As discussed in the Preliminary Determination, SIW’s sales of wire product in Thailand were not sales of a “foreign like product.” When there are no sales in the home market of the foreign like product or when home market sales are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if the prices in such market are representative; the aggregate quantity or, if the quantity is not appropriate, the value of the foreign like product sold by the producer or exporter in the third-country market is five percent of more of the aggregate quantity of the subject merchandise sold in or to the United States; and the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. We determined in this case that SIW’s sales to South Africa meet these criteria. See Comment 2 for further discussion.

B. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act,⁵ to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive selling, general, and administrative expenses and profit. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁶

To determine whether comparison market sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.⁷ If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In this investigation, we obtained information from SIW regarding the marketing stages involved in making the reported third-country and U.S. sales, including a description of the selling activities performed by SIW for each channel of distribution. Our LOT finding is summarized below.

In South Africa, SIW sold exclusively through an unaffiliated trading company during the POI which re-sold the merchandise to an end user. SIW performed identical selling functions for all third-country sales.⁸ Therefore, we determined that there is only one LOT in South Africa. In the U.S. market, SIW sold only to its U.S. affiliate, Tata Steel International (Americas) Inc. (TSIA), which re-sold the subject merchandise to end users. SIW performed identical selling functions for all U.S. sales to TSIA.⁹ Based on this information, we determined that only one LOT exists in the U.S. market.

We compared the NV LOT (based on the selling activities associated with the transactions between SIW and its third-country customer) to the CEP LOT (based on the selling activities associated with the transactions between SIW and its affiliated importer, TSIA). Based on our review and verification of the selling functions described in SIW's questionnaire responses, we determined that the selling functions SIW performed for its third-country customer are virtually

⁵ See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

⁶ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁷ See 19 CFR 351.412(c)(2).

⁸ See SIW's third-country Section B questionnaire response dated November 12, 2013 (TCBQR), at page 5 and Exhibit B-47.

⁹ See SIW's Section A questionnaire response dated July 16, 2013 (QRA), at page 11 and TCBQR at Exhibit B-47.

identical to the selling functions performed for sales to TSIA.¹⁰ The only difference is that order input/processing is performed for third-country sales and not for sales to TSIA. Therefore, we conclude that SIW made third-country and CEP sales at the same LOT. Accordingly, all comparisons of CEP to NV are at the same LOT, and neither a LOT adjustment pursuant to section 773(a)(7)(A) of the Act nor a CEP offset pursuant to section 773(a)(7)(B) of the Act¹¹ is warranted.

C. Cost of Production Analysis

On December 5, 2013, the Department initiated a sales-below-cost investigation with respect to SIW's third-country sales for consideration in the final determination.¹² We examined SIW's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted and described below.

1. Calculation of Cost of Production

We calculated the cost of production (COP) based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for G&A and financial expenses, in accordance with section 773(b)(3) of the Act. Except as stated below, we relied on the COP data submitted by SIW in its questionnaire responses for the COP calculation.

We adjusted SIW's reported monthly, coil weight-specific wire rod costs to reflect the POI weighted-average wire rod consumption costs with no distinction for coil weight. We denied SIW's allocation of wire rod costs to remnants/short coils and, instead, offset SIW's wire rod costs with the revenue from the sale of these remnant/short coils.¹³

2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POI to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, direct and indirect selling expenses, and packing expenses.

¹⁰ See memorandum entitled "Verification of the Sales Responses of the Siam Industrial Wire Co., Ltd. and Tata Steel International (Americas) Inc. in the Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from Thailand, dated March 5, 2014 (Sales Verification Report), at pages 6-7.

¹¹ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27372 (May 19, 1997) ("the Department will not make a CEP offset where the Department bases normal value on home market sales at the same LOT as the CEP").

¹² See memorandum entitled "The Petitioners' Allegation of Sales Below the Cost of Production for The Siam Industrial Wire Co., Ltd.," dated December 5, 2013.

¹³ See memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Siam Industrial Wire Co., Ltd.," dated April 28, 2014 (Final Cost Memo).

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's comparison market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

The results of our cost test for SIW indicated that, for third-country sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers. Because shipment date preceded the invoice date, we used the shipment date as the date of sale. We made a deduction for inland freight, under section 773(a)(6)(B)(ii) of the Act.

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses, e.g., imputed credit and bank charges. We recalculated third-country credit expenses using a POI-average interest rate based on Federal Reserve rates.¹⁴ Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third-country packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

VII. Discussion of the Issues

Comment 1: Request to Apply Adverse Facts Available for the Final Determination

The petitioners argue that the Department should apply total adverse facts available (AFA) and rely on the petition margin of 53.2 percent for the final determination because SIW failed to cooperate to the best of its ability in this proceeding.¹⁵ If the Department determines total AFA is not warranted, the petitioners aver that the Department should rely on partial AFA and recalculate the reported wire rod costs to include the cost of all wire rod used in the production of PC tie wire for the U.S. customer regardless of the final country to which the PC tie wire was sold.¹⁶

¹⁴ See Final Determination Calculation Memo.

¹⁵ The petitioners cite the May 13, 2013 Antidumping Duty Initiation Checklist at page 9.

¹⁶ See the petitioners' case brief at Attachment 1.

Alternatively, the petitioners suggest that the Department rely on SIW's highest reported cost for high carbon wire rod with certain adjustments to value the wire rod cost of all reported products.¹⁷

The petitioners argue that the Department allows a respondent to deviate from its normal books and records only after consulting with the Department.¹⁸ According to the petitioners, SIW made no mention of a departure from its normal accounting system or of any problems with the company's SAP accounting system with respect to its cost reporting until its supplemental section D response submitted after the Preliminary Determination.¹⁹ The petitioners contend that SIW's actions prevented Department officials from understanding the nature and extent of the SAP deficiencies and whether SAP-based actual unit costs might be reasonably relied on, as required by statute and the Department's practice.²⁰ The petitioners assert that the Department has found that failure to provide cost data as requested is grounds for making an adverse inference.²¹ The petitioners conclude that because SIW failed to cooperate to the best of its ability by failing to notify the Department or request assistance as instructed, an adverse inference in this case is warranted.²² The petitioners refute SIW's assertion that the Department confirmed the need for SIW to depart from its normal product-specific cost in the Department's Cost Verification Report.²³ The petitioners point to page one of the report which states that the report does not draw conclusions as to whether the information was successfully verified. Furthermore, the petitioners oppose SIW's claim that the Department's reliance on SIW's reported costs is consistent with Department practice.²⁴ The petitioners assert that in the instant case, the Department found huge disparities between SIW's standard and actual costs and that SIW was unable to provide explanations for these differences.²⁵

The petitioners also contend that SIW did not cooperate to the best of its ability because the company failed to have a knowledgeable SAP person available at verification.²⁶ The cost verification report states that while an Information Technology (IT) specialist attempted to act as a

¹⁷ See id.

¹⁸ The petitioners cite to Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 76, 79-80 (January 4, 1999) (CTL Plate from Mexico); and Static Random Access Memory Semiconductors Final Results and Partial Rescission of Antidumping Duty Administrative Review, 65 FR 55005 (September 5, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹ The petitioners refer to the supplemental section D questionnaire response dated December 30, 2013 (SDQR).

²⁰ The petitioners cite section 773(f)(1)(A) of the Act.

²¹ The petitioners point to CTL Plate from Mexico where the Department found that the respondents in that case failed to cooperate because they did not comply with information requests and they failed to notify the Department or request assistance as instructed in the Department's questionnaire.

²² The petitioners cite Nippon Steel Corp. v. United States, 337 F.3d 1373, 1381 (Fed Cir 2003).

²³ See memorandum entitled "Verification of the Cost Response of Siam Industrial Wire Co., Ltd. in the Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wires from Thailand," dated March 6, 2014 (Cost Verification Report).

²⁴ The petitioners cite to Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan, 67 FR 35474 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 3.

²⁵ The petitioners refer to the Cost Verification Report at page 19.

²⁶ The petitioners cite the Department's Cost Verification Agenda dated January 16, 2014, at page 2 and the memorandum to the File from LaVonne Clark, titled "Telephone Call with Mr. Ed Lebow, Counsel to The Siam Industrial Wire Co., Ltd. (SIW)," dated January 9, 2014.

"go-between" with Tata Steel Ltd., "all SAP specialists are in India."²⁷ The petitioners conclude that, as such, no one with the "highest level of SAP access and permissions" was available at verification as instructed by the Department. The petitioners assert that the phone contacts the Department conducted at verification with Tata Steel's SAP personnel in India should be characterized as entirely uncooperative and non-responsive.²⁸ The petitioners emphasize that the problems encountered by the Department in verifying SIW's SAP system show that SIW failed to have a person with the highest level of SAP access and permissions available for verification as instructed by the Department. Moreover, the petitioners assert that the Department's understanding of SIW's product-specific costs in the SAP system were stymied by a complete lack of ability to understand the SAP system that served as the official books and records for SIW.²⁹ The petitioners contend that although the Department was able to confirm that discrepancies between SIW's standard and actual costs in the SAP system exist, the Department was prevented from determining precisely how the SAP system calculates product-specific costs and what caused the SAP system anomalies. The petitioners allege that had a SAP system specialist been available at verification, the Department could have determined whether or not SIW's SAP system could reasonably have been used to report product-specific costs. According to the petitioners, SIW's failure to comply with the Department's instructions that persons with the highest level of SAP access and permissions be available to the verifiers at all times during the verification prevented the Department from verifying SIW's claim that it had to resort to a system outside its normal cost accounting system.³⁰

The petitioners allege that because SIW officials responsible for the SAP system (*i.e.*, personnel from SIW's parent, Tata Steel) reported that actual costs can be calculated by the SAP system, the Department should not accept SIW's alternative reporting methodology that does not tie to its books and records.³¹ The petitioners argue that SIW's and Tata Steel's refusal to demonstrate how the product-specific costs could be obtained from SIW's SAP system shows noncooperation with the Department's request to provide information in the form and manner required. The petitioners further argue that SIW cannot excuse its failure to tie the reported costs to the company's normal books and records by blaming its parent company, Tata Steel.³² The petitioners assert that Tata Steel not only owns SIW outright, Tata Steel also owns and controls the U.S. sales process.³³ The petitioners emphasize that although Tata Steel and SIW would not

²⁷ The petitioners point to the Cost Verification Report at page 13.

²⁸ The petitioners refer to the Cost Verification Report at pages 16-17.

²⁹ *Id.* at page 16.

³⁰ The petitioners cite to CTL Plate from Mexico where the Department stressed the necessity of verifying a respondent's normal cost and financial accounting systems before it could evaluate the reported product-specific costs.

³¹ The petitioners refer to the Cost Verification Report at page 17.

³² The petitioners cite Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) (Wire Strand from the PRC), and accompanying Issues and Decision Memorandum at Comment 23, where the Department applied AFA to a respondent that failed to provide information on loans, grants and electricity payments made by its parent company; and Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24368 (May 6, 1999) (Hot-Rolled Steel from Japan), affirmed in Kawasaki Steel Corp. v. United States, 110 F. Supp. 2d 1029, 1037-38 (CIT 2000), where the Department applied AFA to a respondent that failed to provide information for one of its joint-venture parent companies, and whose efforts to obtain the missing data were limited to requesting that its parent company provide data but otherwise taking a "hands off" approach.

³³ See the petitioners' case brief at page 13.

provide a SAP specialist to assist at the cost verification, Tata Steel's involvement in SIW's operations, and in this investigation, extended to the presence of a company official from Tata Steel at the sales verification. The petitioners conclude that Tata Steel was willing and able to send personnel to the Department's verifications when it suited Tata Steel's purposes to do so. The petitioners allege that the record evidence shows that Tata Steel has operational control over SIW and its production and sales of PC tie wire.³⁴ Therefore, the petitioners conclude that SIW and Tata Steel are affiliated under section 771(33)(E) and (G) of the Act. Because of this affiliation, the petitioners maintain that the Department should treat SIW and Tata Steel as a single entity and the uncooperative acts of either should be attributed to both.³⁵ Accordingly, the Department should apply AFA to both Tata and SIW as a single corporate entity given the noncooperation and hindrance of verification evidenced in this case.³⁶

Furthermore, the petitioners argue that SIW was not cooperative with respect to its sales reporting beginning with its initial questionnaire response in which it claimed that construction plank wire sold to a Thai specification in its home market meets or exceeds the ASTM A-881 specification.³⁷ Although the petitioners concede that it may not have been clear to the Department prior to verification the extent to which SIW knew or should have known that the home market product could not reasonably be considered as PC tie wire or to meet or exceed the ASTM A-881 specification, the petitioners assert that Department officials visually inspected construction plank wire at the sales verification and easily determined that the product was smooth, without indentation and, therefore, could not satisfy ASTM A-881. Based on the additional verified information, the petitioners argue that the Department can only conclude that SIW purposely misled the Department and failed to cooperate to the best of its ability. The petitioners continue that, because the presence of indentations is a critical requirement for compliance with ASTM A-881, it is clear that SIW – a steel producer with significant technical knowledge – could not reasonably claim that the construction plank wire was the same as the tie wire sold to the United States and South Africa and that its product met the ASTM A-881 standard. Furthermore, the petitioners protest that, because it took the Department several months to determine that SIW's construction plank wire was not in-scope merchandise and could not be used as the basis for sales comparisons, SIW's cost data was not submitted until shortly before the preliminary determination, hindering the Department's ability to thoroughly examine the cost data prior to (or at) verification.

³⁴ The petitioners assert that Tata Steel maintains control of, not just the potential to control, SIW's cost system and costing of its products because Tata Steel develops SIW's bills of material (BOM) (see Cost Verification Report at pages 13-19). The petitioners also cite SIW's supplemental section A questionnaire response dated August 26, 2013 (SAQR), at page 6 and sales verification exhibit (SVE) 43 filed with the Department on February 12, 2014.

³⁵ The petitioners cite to Final Results of the First Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Brazil, 70 FR 28271 (May 17, 2005), and accompanying Issues and Decision Memorandum at Comment 4 (Steel Wire Rod from Brazil); and to Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Norway, 63 FR 31411, 31423 (June 9, 1998) (Salmon from Norway).

³⁶ The petitioners refer to Magnesium Metal Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, 70 FR 9037 (February 24, 2005) (Magnesium Metal from the PRC), and accompanying Issues and Decision Memorandum at Comment 2.

³⁷ The ASTM A-881 specification is expressly subsumed within the scope of this investigation.

If the Department determines that total AFA is not warranted in this case, the petitioners assert that the Department should apply partial AFA to SIW's reported wire rod costs. As such, the petitioners suggest that the Department rely on a per-unit wire rod cost that reflects the costs for all wire rod originally used in production for SIW's U.S. customer, CXT, regardless of the ultimate country to which the PC tie wire was sold.³⁸ Alternatively, the petitioners propose the Department rely on the per-unit cost of the finished product with the highest reported high-carbon wire rod cost.³⁹ The petitioners note that if the Department relies on either of these values for purposes of determining SIW's wire rod costs, the Department must adjust the values to correct SIW's misallocation of costs to small coils and remnants/short coils.

SIW counters that it has cooperated fully with the Department and that the use of AFA in this case is not warranted. SIW protests the petitioners' allegation that SIW deviated from its normal books and records in its cost reporting and failed to notify the Department of such a deviation. SIW argues that the product-specific costs calculated by SIW's SAP system are nonsensical and that this problem has long been recognized by SIW and its auditors, and it has been explicitly described and illustrated by the Department in its verification report. SIW claims that the company ignored the product-specific actual costs generated by the SAP system, as it does in the normal course of business, and instead relied on the data reflected in the Cost Variance Reports and Program Statements normally prepared by SIW.⁴⁰ SIW emphasizes that, contrary to the petitioners' allegations, the reported costs are based on the books and records prepared in the normal course of business.⁴¹ SIW objects to the petitioners' assertion that SIW did not contact the Department regarding the departure from the product-specific costs reflected in SIW's SAP system. SIW contends that the company notified the Department in SIW's DQR and provided a complete, detailed discussion of the SAP system flaws and the inventory valuation methodology approved by SIW's auditors in the company's SDQR.⁴²

SIW refutes the petitioners' arguments that SIW did not have knowledgeable staff at the verification. SIW maintains that the company's accounting manager, the individual at SIW with the highest level of SAP access and permissions, was available and worked with the Department officials throughout the verification. SIW concludes that the company's obligation to have its most qualified SAP person present at the verification does not extend to finding and bringing in personnel from Tata Steel who may have been able to change the SAP system prospectively but would not in any case have contributed anything to the demonstration or verification of the cost system as actually used by SIW during the POI.⁴³ SIW argues further that it was under no

³⁸ See the petitioners' case brief at page 40.

³⁹ See *id.*

⁴⁰ SIW cites Federal-Mogul Corp. et al. v. United States, 862 F Supp. 384, 400 (CIT 1994), where the court ruled that the Department has discretion in choice of methodology as long as the chosen methodology is reasonable and conclusions are supported by substantial evidence on the record.

⁴¹ SIW refers to the Cost Verification Report at page 17.

⁴² SIW refers to the section D questionnaire response dated November 19, 2013 (DQR) at page 19, and the SDQR at page 7.

⁴³ SIW notes that the only instance where the Department looked beyond SIW's personnel occurred when the Department explored how SIW might have used its SAP system outside the normal course of business, at present or in the future. According to SIW, as a first step, the Department confirmed that SIW's SAP system, as constituted during the POI and as operated by SIW, indeed incorporated (and continued to incorporate) the flawed calculation of actual

obligation to create a new, SAP-based costing system in order to report product-specific costs in response to the Department's questionnaires. SIW rationalizes that doing so would have meant deviating from the company's normal practices that are subject to audit and consolidated into Tata Steel's financial statements. SIW suggests that the company's lack of support from Tata Steel in fixing the problems in its SAP system with respect to product-specific costs, as demonstrated to, and noted by, the Department, support SIW's presentation of its cost data based on its routinely kept records. SIW also suggests that Tata Steel's lack of focus on this matter shows that the non-operative functions of SIW's SAP system were of little relevance in the routine course of Tata Steel's business, as they were of little importance in the routine course of SIW's business.

SIW objects to the petitioners' assertion that the Department's Cost Verification Report reveals a complete inability to tie SIW's reported costs to the company's official books and records. SIW asserts that the Department's report, to the contrary, shows not one single instance where the Department states that it was unable to trace the data submitted by SIW to source information. SIW asserts that the petitioners, on one hand, conclude that SIW failed to rely on its books and records because it did not rely on the flawed product-specific costs in its SAP system while, on the other hand, suggest that SIW was obligated to initiate an effort to fix the problem and create new SAP data. SIW argues that any correction to the product costs in the SAP system would be generated retroactively up to 18 months after the fact; be constructed entirely *de novo* and solely for purposes of the antidumping questionnaire response; bear no relationship whatsoever to the books and records as actually maintained by SIW; and be inconsistent with the audited financial statements of SIW.

With respect to its home market sales reporting, SIW described the steps it took to determine which products to include in its Section B questionnaire response. SIW states that the steel wire used in reinforcing the concrete railroad ties that it sells in Thailand (CW4) is narrower in diameter than the PC tie wire that it exports to the United States, and is crimped rather than indented. However, the scope explicitly uses the terms "regardless of shape, size or other alloy elements." SIW argues that CW4 is high carbon, stress relieved, indented or otherwise deformed and, according to SIW's engineers (and later corroborated by independent consultants), meets at a minimum the performance standards established by ASTM A-881. Accordingly, SIW reasoned that its CW4 fell within the scope of investigation. SIW further argues that, although the 2010 modification of ASTM A-881 added a requirement for indentation rather than deformation, no particular version of ASTM A-881 was specified in the scope of investigation. SIW states that the scope explicitly includes wire that is not "indented" but is otherwise "deformed." Furthermore, SIW explains that because the scope covered wire "suitable for use as prestressed tendons in concrete railroad ties" as opposed to only wire actually used in that capacity, SIW felt obligated to furnish information to the Department covering all of its sales of CW4, both for use in concrete railroad ties and for other uses (principally certain reinforced construction planking).

SIW objects to the petitioners' suggestion that it was trying to mislead the Department by reporting home market sales that were not subject to the scope of investigation. SIW argues that, to the contrary, its response was its best effort to be responsive to the Department's questionnaires.

product-specific cost (see the Cost Verification Report at page 15 and Exhibit SAP 3).

SIW claims that it recognized that if it reported data on the very few South African sales rather than the very large number of home market sales, it might raise questions about its responsiveness. Therefore, according to SIW, it followed what it determined to be the correct and most comprehensive course of action and submitted data on all home market sales of CW4 that was used as PC tie wire, or was identical to that used as PC tie wire, and thus “suitable” for such use. Moreover, according to SIW, the law does not require that home market comparison merchandise in all cases fall within the scope of investigation.⁴⁴

Finally, SIW argues that it is unreasonable for the petitioners to conclude that its responses to the Department’s nine major questionnaires, which is a time-consuming and costly endeavor for any company, let alone one with such a small U.S. sales volume, amount to a lack of cooperation. SIW asserts that when it was asked to provide both third-country sales and CV cost information it did so promptly. Furthermore, according to SIW, these responses were verified as accurate based on the normal books and records of SIW.

The Department’s Position:

We agree with SIW that the application of AFA is not warranted in this case. Accordingly, we relied on SIW’s reported costs, adjusted as described in Comment 3 below, for the final determination.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

⁴⁴ See section 771(16) of the Act.

Section 773(f)(1)(A) of the Act mandates that a respondent's costs be based on the respondent's records if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the producing country and reasonably reflect the costs associated with the production and sale of the merchandise.

In the normal course of business, SIW, a subsidiary of Tata Steel, uses its SAP system for purchase, production, and sales transactions. SIW is required to use the SAP system and Tata Steel's SAP structure for purposes of incorporating SIW's financial information into Tata Steel's consolidated financial statements. SIW's financial accounting is contained in the "FI" module of the SAP system while the cost accounting is maintained in the "CO" module. SIW's audited financial statements tie directly to the inventory values, revenues, and expenses contained in the "FI" module. Product-specific actual costs are normally calculated by the CO module of the SAP system. However, as a result of the variance allocation programming issue discussed below, the product-specific costs calculated in the CO module are not used for management or financial statement purposes in the normal course of business. Instead, SIW, in the normal course of business calculates the COP by product division at the end of each month (i.e., the Cost Variance Report by Product Division) and summarizes the production costs, as well as other income statement line items, for all product divisions in the month-end Program Statement. See the Department's Cost Verification Report at 4-20.

SIW's standard costs reflected in the CO module of its SAP system are based on the bill of materials (BOM) established by SIW's production department and reflect the original input requirements for each product. SIW's production department may alter the input requirements for a product over time but the BOM is not revised accordingly in the SAP system. At the end of each month, the product-specific standard costs are adjusted to actual costs through a series of program steps (called the actualization) in SIW's SAP system. This actualization erroneously over-allocates costs to some products and under-allocates costs to other products. As a result, the allocated product-specific actual costs in the CO module bear no relationship to the costs incurred to manufacture the products. This programming issue was originally discovered by SIW during the implementation of the SAP system in 2006. At verification, SIW made available its IT specialist and accounting general manager, the personnel at SIW with the highest levels of SAP access. These officials stated that only Tata Steel personnel may make changes within the SAP system. During verification, SIW demonstrated that, since the SAP implementation it has repeatedly communicated with Tata Steel, to no avail, in an effort to understand why the above-described differences occur and to have the SAP system corrected. See the Cost Verification Report at 10-20.

In the normal course of business, SIW personnel extract data from the SAP system and use that data to create the Cost Variance and Program Statement reports in lieu of the product-specific costs calculated by the SAP system. These routine sets of reports are created for management and financial statement purposes, and are printed and bound into a hard-copy book each month for record-keeping purposes. Because the product costs generated by the CO module are reflected in SIW's inventory records in the FI module of the SAP system, the company adjusts the value of its inventory in the normal course of business so that the inventory values are consistent with the Cost

Variance Reports. This routine month-end inventory adjustment is required and approved on a monthly basis by SIW's auditors.⁴⁵

The petitioners' arguments for the application of AFA in this case are based on the assumption that SIW's SAP system, in its entirety, represents the company's normal books and records and that any deviation from the SAP system is consequently a deviation from SIW's normal books and records. We disagree. Since the implementation of its SAP system, SIW has used the CO module of its SAP system in a limited manner due to a programming error(s) and the resulting misallocation of variances among products. Instead of relying on the product-specific costs reflected in the CO module, SIW implemented a routine month-end process in which product costs are calculated for each product division using data from the FI module reported in the Cost Variance and Program Statement reports.⁴⁶ These data are then used to determine inventory values for financial statement purposes. As such, the Cost Variance and Program Statement reports are an integral part of SIW's normal books and records.⁴⁷

SIW deviated from the Cost Variance Report and Program Statement to determine the reported product-specific costs because the product costs reflected in its normal books and records are not specific to the physical characteristics outlined by the Department. Contrary to the petitioners' assertions, SIW notified the Department in its initial response to section D of the Department's questionnaire of the necessity of recalculating the product costs in its normal books and records to be more product-specific in compliance with the Department's reporting requirements.⁴⁸ As such, we find that SIW did not fail to provide cost data as the Department requested, nor did SIW fail to act to the best of its ability as alleged by the petitioners.⁴⁹ Furthermore, we find that SIW's reported costs tie directly to SIW's normal books and records.⁵⁰

We also find the petitioners' conclusion that AFA is warranted because the Department was unable to determine at verification how SIW's SAP system calculates product-specific costs and what caused the anomalies in SIW's CO module to be off-point. The Department verified that a programming error, which results in the over- and under-allocation of variances among products such that the resulting costs bear no relationship to actual production costs, existed since SIW's implementation of its SAP system.⁵¹ The Department also verified that, in response to this problem, SIW implemented a systematic approach in determining product costs, which has become part of SIW's normal books and records.⁵² Moreover, SIW's routine practice of calculating product costs outside the CO module is in compliance with Thai GAAP, as the

⁴⁵ See the Cost Verification Report at pages 4-20.

⁴⁶ The petitioners' argument that AFA is warranted because the Department found huge disparities between SIW's standard and actual costs that SIW could not explain is off-point. These disparities are the result of the erroneous allocations within the CO module of the SAP system and are not reflective of SIW's normal books and records or the reported costs.

⁴⁷ Because SIW calculates product costs in the normal course of business outside the CO module, we find that any arguments regarding whether or not Tata Steel cooperated in resolving the programming issue with SIW's CO module (see the petitioners' references to Steel Wire Rod from Brazil and Salmon from Norway) to be moot.

⁴⁸ See SIW's DQR at page 19.

⁴⁹ Because we find that SIW did not fail to provide the information requested by the Department, the facts in this case differ from Wire Strand from the PRC and Hot-Rolled Steel from Japan cited by the petitioners.

⁵⁰ See e.g., the Cost Verification Report at pages 22-26.

⁵¹ See id., at page 5.

⁵² See id., at pages 7-9.

resulting adjustments to SIW's inventory values based on those calculations are required by SIW's auditor for financial statement purposes.⁵³ Because we consider the Cost Variance and Program Statement reports (*i.e.*, SIW's adopted resolution to the SAP CO module cost anomalies) to be SIW's normal books and records, and because SIW notified the Department at the outset that it deviated from those reports in order to comply with the Department's reporting requirements, we find that SIW did not fail to act to the best of its ability in this investigation as alleged by the petitioner.⁵⁴ Furthermore, we find that SIW's reported costs tie directly to SIW's normal books and records.⁵⁵

We also disagree with the petitioners that AFA is warranted because Tata Steel, affiliated with SIW under section 771(33)(E) and (G) of the Act, failed to have personnel available at the cost verification. The petitioners allege that had Tata Steel personnel been made available at verification, the Department would have been able to determine how product-specific costs were calculated in SIW's CO module. Regardless of whether or not the programming error within the CO module could have been resolved, SIW did not rely on the CO module product costs during the POI as its normal books and records. Therefore, whether or not Tata Steel is affiliated with SIW or Tata Steel personnel were at the cost verification to explain the CO module product costs has no bearing in the instant case. Moreover, understanding the allocation errors and relying on any resulting fix would in and of itself have been a departure from SIW's normal books and records, the very issue objected to by the petitioners.

Furthermore, with respect to the sales reporting, we disagree that SIW impeded the proceeding. Although we did not make a determination that SIW's home market sales were not sales of foreign like product until just prior to the preliminary determination, we do not believe that SIW contributed to this delay. We spent several months examining different aspects of the A-881 standard (*e.g.*, diameter and tensile strength) and issued several additional supplemental questionnaires to SIW before we focused on the importance of indentations in the PC tie wire as a requirement of the ASTM A-881 standard.⁵⁶ We have no reason to believe that SIW intentionally reported merchandise not under consideration in order to prevent the Department from focusing on its cost data. The petitioners' arguments to the contrary are speculative and find no support in the record.

Finally, we disagree with the petitioners that the application of partial AFA to SIW's reported wire rod costs is warranted. As discussed above, SIW reported these costs based on its actual books and records, as well as complied with the Department's requests for information to the best of its ability. Consequently, the Department will not apply AFA to these costs.

⁵³ See *e.g.*, Exhibit A-19 of SIW's SAQR for the auditor's report accompanying SIW's financial statements for the year ended March 31, 2013, where the auditor opined that SIW's financial statements were in compliance with Thai GAAP.

⁵⁴ The Department verified SIW's normal cost and financial accounting books and records, as detailed in the Cost Verification Report at pages 4-20 before examining the product-specific costs (*see* [CTL Plate from Mexico](#), 64 FR 79-80).

⁵⁵ See *e.g.*, the Cost Verification Report at 22-26.

⁵⁶ See *e.g.*, SIW's September 18, 2013, submission; the petitioners' October 17, 2013, submission; and the memorandum entitled "Exchange with NIST Regarding ASTM A881/A881M, TIS 95-2540, and Siam Industrial Wire Company (SIW) Home Market Sales Data," dated October 28, 2013.

In conclusion, based on the information on the record of this investigation, we determine that the application of AFA is not warranted in this case. Accordingly, we relied on SIW's reported costs, adjusted as described in Comment 3 below, for the final determination.

Comment 2: Particular Market Situation Allegation

On November 20, 2013, the petitioners alleged that a "particular market situation" exists with respect to SIW's sales to South Africa. The petitioners claimed that the sales to South Africa are unusable for product comparison purposes because: 1) SIW's sales to South Africa are comprised of PC tie wire that cannot be sold to the U.S. customer, CXT; 2) sales to South Africa are not in-scope merchandise; 3) the price to South Africa is neither normal nor representative of prices for PC tie wire generally; and, 4) SIW made only one sale to South Africa during the POI. In the Preliminary Determination, we based NV on CV, stating that the petitioners' allegation raised questions as to whether SIW's sales to South Africa were suitable for use as a basis for NV, and we did not have sufficient time to analyze the matter prior to the preliminary determination. We noted that we would continue to analyze and address the petitioners' allegation.⁵⁷

The petitioners argue that SIW's sales of PC tie wire to South Africa provide a perfect example for the reason why the "particular market situation" provision was developed under Department practice and codified in the statute.⁵⁸ According to the petitioners, a market that is characterized by a large percentage of sales rejected by the sole customer in the United States, where those sales cannot be resold in the United States and, as rejected merchandise, fall outside the scope, cannot be considered representative of sales in the United States. The petitioners believe that, by definition, these sales will underprice U.S. sales, and cannot form the basis for a valid price comparison. The petitioners continue that it is clear from the record that SIW established South Africa as a repository for merchandise that would not satisfy CXT, its one U.S. customer and, as a result, it would be unfair to compare prices between the two markets. The petitioners cite Fresh Salmon from Chile to support their conclusion that, similar to the Chilean home market examined in that investigation, the South African market is characterized by lower, non-U.S. export quality merchandise and therefore cannot be used for price comparisons.⁵⁹ The petitioners cite Washers from Korea to support their argument that the Department's practice precludes a reliance on out-of-scope merchandise, such as SIW's sales to South Africa, for price comparison purposes.⁶⁰

The petitioners continue that, although SIW referred to merchandise shipped to South Africa as "re-directed" or "re-allocated" tie wire, in reality, none of the re-allocated PC tie wire sold to South Africa may be sold in the United States because that merchandise would not satisfy the minimum requirements of the ASTM A-881 specification that is part of the scope of this investigation.

⁵⁷ See memorandum entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Prestressed Concrete Steel Tie Wire from Thailand," dated December 5, 2013 (Preliminary Determination Decision Memo), at pages 8-9.

⁵⁸ See section 773(a)(1)(B)(ii)(III) of the Act, and 19 CFR 351.404(c)(2)(1).

⁵⁹ See Final Determination of Sales at Less Than Fair Value: Fresh Salmon from Chile, 63 FR 31411, 31418 (June 9, 1998) (Fresh Salmon from Chile) at Comment 4.

⁶⁰ See Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea, 77 FR 75988 (December 26, 2012) (Washers from Korea), and accompanying Issues and Decision Memorandum at Comment 1.

Specifically, the petitioners contend that the merchandise sold to South Africa does not satisfy the minimum ASTM A-881 requirements for any diameter of PC tie wire sold in the United States.

The petitioners further argue that the Department determined in other cases, such as Pasta from Italy,⁶¹ that a single sale is indicative of a particular market situation. According to the petitioners, although SIW separately reported multiple shipments of PC tie wire to South Africa, all of these shipments fulfilled a single order and thus a single sale, as evidenced by SIW's description in the questionnaire response of the single "pro forma" invoice that establishes the date of sale.⁶² The petitioners conclude that, because they demonstrated that a particular market situation exists with respect to SIW's sales to South Africa, which prevents a proper price comparison, the Department should use CV as the basis for NV, as it did in the Preliminary Determination.

While SIW does not directly address the petitioners' particular market situation allegation, it challenges the petitioners' contention that its sales to South Africa were not first-quality merchandise and were outside the scope of the investigation. SIW argues that the Department confirmed at verification that the PC tie wire SIW sells to South Africa is produced to, and complies with, the ASTM A-881 standard. SIW asserts that, while its sales to South Africa are sold with the nominal diameter of 5.25 mm, which is not among the two diameters specifically identified in the ASTM A-881 standard, the standard does not establish specific diameter requirements. Furthermore, according to SIW, the scope of the investigation does not prescribe specific diameter dimensions. Therefore, SIW maintains that, because its sales to South Africa are produced to the ASTM A-881 standard and are used for the manufacture of concrete rail ties, these sales are within the scope of the investigation.

The Department's Position:

Section 773(a)(1)(C) of the Act states that third-country sales may be used as the basis for NV when there are no sales of the foreign like product in the exporting country, when the aggregate quantity of sales of the foreign like product in the exporting country is insufficient to permit a proper comparison, or when a particular market situation in the exporting country does not permit a proper comparison with the EP or CEP. However, third-country sales will not be used as the basis for NV if there is a particular market situation in that third country that prevents a proper comparison with the EP or CEP, within the meaning of section 773(a)(1)(B)(ii)(III) of the Act. The Department found a particular market situation to exist in certain past cases where, for example, the merchandise sold in the comparison market was substandard, the comparison market sales were incidental to the export-oriented business operations of the respondent, or the comparison-market sales transaction(s) involved other unusual circumstances.⁶³

⁶¹ See Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 72 FR 7011 (February 14, 2007) (Pasta from Italy), and accompanying Issues and Decision Memorandum at Comment 1.

⁶² See TCBQR at page 5.

⁶³ See e.g., Pasta from Italy and Final Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Ecuador, 71 FR 54977 (September 20, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

We disagree with the petitioners that a particular market situation exists with respect to SIW's sales to South Africa. In this case, the PC tie wire that SIW sells to its U.S. and South African customers must meet the ASTM A-881 standard, as specified in the scope of investigation. SIW's U.S. customer requires that its merchandise meet certain additional specifications beyond the ASTM A-881 standard.⁶⁴ All of the merchandise sold to South Africa during the POI met the ASTM A-881 standard and production requirements of the scope of this investigation, as evidenced by our review of sales documentation at verification.⁶⁵ Contrary to the petitioners' claim, the merchandise sold to South Africa was neither defective, nor non-prime, merchandise.

The petitioners assert that the merchandise sold to South Africa does not meet any of the three nominal PC tie wire diameters prescribed by the ASTM A-881 standard and cannot be sold to the United States; thus, the South African merchandise is not a foreign like product. The petitioners are incorrect. The ASTM A-881 standard does not prescribe any specific nominal diameter. It identifies two nominal diameters (not three) for purposes of providing examples of tensile strength requirements, but nowhere in the standard is there any specific diameter requirement.⁶⁶ Furthermore, the scope does not specify any nominal diameter requirements, nor does the scope require that the merchandise must be able to be sold to the customer in the United States. If the PC tie wire meets the physical description of the merchandise set forth in the scope, then it is in the scope. Because the merchandise sold to South Africa meets the physical description of the merchandise set forth in the scope, that merchandise is a foreign like product and can be used for comparison purposes.

The petitioners also allege that there was only a single sale during the POI, even though multiple invoices were issued and multiple shipments were made during the POI. In contrast to the situation in Pasta from Italy, in this case, we confirmed that there is an established market in South Africa for sales of PC tie wire because SIW sold PC tie wire to the same customer in South Africa both prior to and subsequent to the POI. In fact, SIW began selling PC tie wire to its South African customer several years prior to the beginning of the POI.⁶⁷ The petitioners add that SIW likely developed the South African market specifically as a sales outlet for merchandise that would not satisfy its U.S. customer. First, there is no record evidence to support this assumption. Second, even if it were true that SIW developed an additional market for sales of products not meeting the heightened requirements of an individual U.S. customer, that fact alone would not render that market unusable for comparison purposes. Accordingly, we based NV on SIW's sales to South Africa for the final determination. Because certain details relating to this issue are business proprietary, see the memorandum entitled "Further Discussion of Comment 2 in the Issues and Decision Memorandum," dated April 28, 2014, and hereby adopted by this memorandum, for a complete discussion of this issue.

⁶⁴ See QRA at page A-20, and pages 33-34 of SVE 12.

⁶⁵ See Sales Verification Report at pages 7-9, and SVE 12 and 20.

⁶⁶ See QRA at Exhibit A-16.

⁶⁷ See SIW's third supplemental questionnaire response dated December 23, 2013 (SQR3), at page 2, and the Sales Verification Report at page 15.

Comment 3: SIW's Reported Cost Allocation Methodology

The petitioners allege that the costs reported by SIW are distorted and, as such, are not usable for the final determination. The petitioners also argue that the facts in the instant case do not compare to the facts in OCTG from Saudi Arabia where the Department found that differences between standard and actual product-specific costs resulted in negligible differences in materials costs.⁶⁸ According to the petitioners, SIW created an alternative cost allocation reporting methodology, based on inaccurate BOMs, that significantly understates the costs incurred to produce the merchandise under consideration; incorrectly allocates higher costs to small coils and "remnants" as opposed to the higher-value PC tie wire sold to CXT; and does not reflect yielded, weighted-average wire rod costs for the POI.

SIW counters that the Cost Verification Report establishes that the COP data reported by SIW to the Department are accurate and taken from, or based directly upon, SIW's records kept in the normal course of business. SIW contends that in those instances where the company's normal books and records did not directly reflect the information requested by the Department, SIW used reasonable and appropriate means to calculate the requested data.⁶⁹ SIW emphasizes that its reported costs were not only derived from, but also reconciled to, the company's normal books and records. SIW maintains that the company demonstrated to the Department that, as a result of the known flaws in the SAP's product cost calculations, SIW does not rely on the calculated per-unit costs from the SAP system for either financial accounting or management purposes. Instead, in the normal course of business, SIW extracts data from the SAP system to create the monthly management reports (*i.e.*, the Cost Variance Reports for each product division, the Cost Variance Report for SIW in total, and the Program Statement).⁷⁰ SIW states that, in order to respond to the Department's reporting requirements, SIW was required to engage in a series of additional, but verifiable, steps linking the COP for the merchandise under consideration to the actual quantity and cost of wire rod consumed by SIW in the production of each product during the POI.

A. Bills of Material

The petitioners assert that, prior to verification, SIW did not identify any problems regarding the reliability or accuracy of the company's BOMs within the SAP system. According to the petitioners, SIW stated that it had relied on BOMs to determine the company's reported costs because the BOMs would provide the Department with accurate, reliable and verifiable costs at the product specific level.⁷¹ The petitioners argue that SIW's BOMs for the merchandise sold to the United States and South Africa, however, bear no correlation to the actual production of the merchandise.⁷² According to the petitioners, SIW stated throughout its response that it had to use a specific type of wire rod for U.S. and South African sales. However, at verification SIW

⁶⁸ SIW refers to the memorandum entitled "Oil Country Tubular Goods from Saudi Arabia, Cost of Production and Constructed Value Calculation Adjustments to the Preliminary Determination - Jubail Energy Services Company," dated February 14, 2014 (OCTG from Saudi Arabia).

⁶⁹ *Id.* The Department substituted its own cost calculation where respondent's SAP system did not operate correctly and produced "flawed" results.

⁷⁰ SIW points to the Cost Verification Report at page 4.

⁷¹ The petitioners cite to SIW's DQR at pages 14 and 19, as well as SIW's SDQR at page 11.

⁷² See the petitioners' case brief at page 21.

acknowledged that it could use wire rod with "slightly different specifications" than those indicated on the BOMs.⁷³ The petitioners also note that the record evidence shows that SIW's BOMs for PC tie wire were inexplicably created before SIW began production of the subject product.⁷⁴

The petitioners assert that contrary to SIW's record statements, SIW's costs ultimately did not rely on the BOMs as the basis for its calculated costs.⁷⁵ Despite every indication that the BOM did not serve as the basis of the reported costs, the petitioners contend that SIW failed to provide an alternative explanation as to the basis of its reported costs. The petitioners also allege that statements made by SIW at verification are inconsistent with respect to whether SIW relied on the BOMs in the company's SAP system. According to the petitioners, no explanation was provided by SIW for why it reverted to relying on the SAP system for wire rod costs, which SIW had repeatedly insisted provided incorrect product-specific costs. The petitioners also allege that the Cost Verification Report states that SIW used its BOMs selectively, such as in the calculation of the yield ratios.⁷⁶

SIW argues that its reported wire rod costs for the merchandise under consideration are based on the actual wire rod costs incurred during the POI as required by the Department. SIW asserts that the Department successfully tied the costs to the production order of the merchandise under consideration, raw material inventory movement reports, the Cost Variance Reports, and to SIW's trial balance. SIW emphasizes that the Department verified that the BOMs in SIW's SAP system reflect the original wire rod specification for initial production and are not updated for any production revisions. SIW contends that the petitioners' arguments regarding SIW's BOMs are irrelevant because SIW, knowing that the actual materials consumed are not necessarily identical to the materials reflected on the BOMs, relied instead on the actual materials consumed in the production of the merchandise under consideration.⁷⁷

B. Weighted-Average Costs

The petitioners assert that SIW's reported coil-specific costs distort the cost of manufacturing for the merchandise under consideration. According to the petitioners, SIW's reported coil costs do not represent the weighted-average cost incurred during the POI because SIW calculated its coil costs based on the specific coils of wire rod that ultimately resulted in finished PC tie wire that both met the requirements of CXT and was actually sold to CXT.⁷⁸

The petitioners argue that the Department's practice is to reject a respondent's reporting of coil-specific costs because of the potential that such coil-specific costs could distort the true COP.⁷⁹ The petitioners allege that the distortions in SIW's reported costs support the

⁷³ The petitioners refer to the Cost Verification Report at page 3.

⁷⁴ See the petitioners' case brief at page 23.

⁷⁵ The petitioners cite SIW's SDQR at Exhibit D-37.

⁷⁶ The petitioners point to the Cost Verification Report at page 28.

⁷⁷ SIW refers to the Cost Verification Report at Exhibits 10 and 19.

⁷⁸ The petitioners cite the DQR at page 21 and SDQR at page 11.

⁷⁹ The petitioners rely on Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review, 72 FR 43598 (August 6, 2007) (SSB from the UK), and accompanying Issues and Decision

Department's conclusion that coil-specific costing for wire rod introduces distortions that weighted-average costs for the POI do not.⁸⁰ Moreover, the petitioners point out that SIW uses grade 82B wire rod to produce PC strand, a product not subject to this investigation. The petitioners assert that SIW failed to submit any information on the cost of the wire rod inputs for PC strand, meaning a significant portion of SIW's grade 82B wire rod costs were not reported.⁸¹ The petitioners conclude that, at a minimum, SIW should have included wire rod costs that were calculated based on the weighted-average POI cost for all of the grade 82B wire rod it consumed during the POI, including that used to produce PC strand, rather than only for the specific coils of wire rod the processing of which resulted in PC tie wire that met each customer's specifications. The petitioners rationalize that, similar to the Department's requirement that production costs are weight-averaged across production facilities even if merchandise is only produced at one factory, the Department requires weighted-average costs for all products within a production facility.⁸² Likewise, the petitioners submit that the Department should not allow SIW to select specific coils of wire rod to use as the basis for its reported costs, particularly where the selection is based on BOMs that were proven at verification to be inaccurate.

The petitioners also argue that the record demonstrates that SIW's reporting methodology understates the costs incurred to produce merchandise under consideration because it fails to account for all wire rod consumed in SIW's attempts to produce subject merchandise for CXT, thus failing to account for yield losses.⁸³ The petitioners assert that the cost of wire rod used to produce PC tie wire for CXT should be based on the total quantity of wire rod SIW used in production that was intended to fill orders from CXT.

SIW argues that the company's reliance on the average actual wire rod cost for the wire rod material inputs consumed each month was explicitly detailed in its DQR.⁸⁴ SIW contends that the company's description of the methodology used was succinct, and that neither the petitioners nor the Department raised any objections to the use of the monthly average actual cost of wire rod consumed. Moreover, notes SIW, the Department's Cost Verification Report does not reference any issues regarding SIW's reliance on monthly average actual wire rod costs.

SIW further argues that the Department's decision in SSB from the UK is plainly distinguishable from the instant investigation.⁸⁵ SSB from the UK, according to SIW, concerns an administrative review where the Department may be concerned that a respondent knows that its production costs will be utilized by the Department in the calculation of a dumping margin and, as such, may then manipulate certain data to obtain a lower margin. SIW asserts that no such concern exists in an

Memorandum at Comment 1.

⁸⁰ See the petitioners' case brief at pages 30-31.

⁸¹ The petitioners refer to the Cost Verification Report at page 30.

⁸² The petitioners cite Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (December 26, 2002) (Pistachios from Iran), and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium From France, 66 FR 65877 (December 21, 2001) (Uranium from France), and accompanying Issues and Decision Memorandum at Comment 6.

⁸³ See the petitioners' case brief at pages 33-35.

⁸⁴ SIW refers to the DQR at page 22 and Exhibit D-12.

⁸⁵ See SSB from the UK and accompanying Issues and Decision Memorandum at Comment 1.

original investigation, because a respondent in an investigation has no knowledge that a case will be filed. SSB from the UK also differs from the instant case, according to SIW, in that the respondent in that case assigned a specific billet purchase price to each job order within a control number (CONNUM).⁸⁶ The Department determined that because most of the CONNUMs reported by the respondent in SSB from the UK contained a single job order or a small group of job orders, the billet-specific material costs for each CONNUM were highly dependent upon the timing and terms of specific billet purchases.⁸⁷ The Department also noted in SSB from the UK that reporting unique, rather than average, costs provides the respondent the ability to artificially lower its dumping margin by choosing to use its lower-cost billets to produce home market sales of stainless steel bar that will be compared to the US market sales of stainless steel bar.⁸⁸ According to SIW, its reported wire rod costs for each CONNUM were based on the weighted-average actual cost of all wire rod inputs within a given specification (e.g., grade, dimension, coil weight) that were consumed in the production of all PC tie wire products in that month. The monthly weighted-average wire rod costs were then weight-averaged across the POI. SIW asserts that, unlike the respondent in SSB from the UK, SIW did not separately cost the specific coils used for different PC tie wire products on a production order-specific basis. As such, SIW refutes the petitioners claim that SIW provided unique rather than average costs.

SIW objects to the petitioners' claim that its reliance on the actual monthly wire rod costs resulted in distortions. SIW asserts that the record evidence in this case does not support such a conclusion.⁸⁹ SIW also notes that the wire rod cost data referenced by the petitioners reflect the overall weighted-average cost of wire rod across all dimensions and across all suppliers. SIW reiterates that wire rod products of different dimensions are sold at prices that are significantly different.⁹⁰

SIW protests the petitioners' argument that the cost of the wire rod consumed to produce certain PC tie wire sold to the South African market should be assigned to the U.S.-bound products. According to SIW, the petitioners are attempting to portray as waste products certain products that are produced and sold by SIW as prime products. SIW maintains that its South Africa-bound products are not secondary products. SIW argues that the Department's recognition in past steel cases that products re-graded from prime to secondary products must be allocated their full production costs dictates that SIW's products that have been re-graded from super-prime to regular-prime should be treated similarly.⁹¹ SIW counters that even if the products sold in South Africa were secondary products, it is the Department's practice to assign the same production cost to prime and secondary products, especially in cases involving steel products.⁹² According to SIW, the Department recognizes that the same materials and processes are absorbed by both prime and non-prime products, whether they can be sold as prime merchandise or not. Finally, SIW

⁸⁶ See id.

⁸⁷ See id.

⁸⁸ See id.

⁸⁹ See SIW's rebuttal brief at page 24.

⁹⁰ SIW refers to the Cost Verification Report at CVE 10.

⁹¹ See SIW's rebuttal brief at pages 26-27 for the references to "super-prime" and "regular-prime."

⁹² SIW cites to Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65272 (October 31, 2013), and accompanying Issues and Decision Memorandum at Comment 10.

argues that the petitioners' recalculation of the wire rod costs of SIW's U.S.-bound product should be rejected because it would have the Department treat the South Africa-bound product as a waste product with a production cost of zero. SIW argues that the record evidence demonstrates that the South Africa-bound product is prime product.

C. Small Coils and Remnants/Short Coils

The petitioners also argue that SIW's allocation of full costs to small coils and remnants/short coils, which are essentially scrap, not only results in the misallocation of raw material costs, but also highlights the erroneous nature of SIW's alternative cost calculations. The petitioners allege that SIW improperly allocated full costs to these items by claiming that small coils and remnants/short coils are "products" and not scrap.⁹³ The petitioners emphasize that SIW does not set out to manufacture these items and that SIW concedes that they are less valuable than normal coils.⁹⁴ The petitioners refute SIW's claims that these products are sold as wire products to customers who can use such products for their applications and that they are not sold as scrap to scrap dealers.⁹⁵ The petitioners allege that the Department, at verification, found evidence to the contrary.⁹⁶ Furthermore, the petitioners argue that SIW's claim that small coils are prime merchandise is not plausible given SIW's own definition of small coils.⁹⁷ The petitioner concludes that SIW's improper assignment of full costs to small coils and short coils/remnants, and away from the subject merchandise, understates the reported costs.

The petitioners also emphasize that SIW's allocation methodology resulted in significantly higher costs allocated to small coils and remnants than to the costs allocated to merchandise produced to CXT's exacting specifications.⁹⁸ Rather than allocating full costs to small coils and remnants, the petitioners contend that SIW should have treated these products as by-products.⁹⁹ As further evidence that small coils and short coils are by-products, the petitioners cite SIW's statements at verification that BOMs are not established for the small coils or short coils because these products are not intentionally produced.¹⁰⁰

The petitioners allege further that SIW failed to provide accurate information on its use of affiliated party inputs in the production of the subject merchandise. According to the petitioners, SIW originally reported that wire rod purchased from affiliates was not used in the production of the merchandise sold to South Africa.¹⁰¹ However, at the commencement of the cost verification, SIW officials stated that while wire rod purchased from affiliates could have been used in the

⁹³ The petitioners refer to SIW's DQR at page 17 and SDQR at page 2.

⁹⁴ The petitioners cite the SDQR at Exhibit D-25 and the Cost Verification Report at pages 12 and 13.

⁹⁵ The petitioners point to the SDQR at page 2.

⁹⁶ The petitioners cite the Cost Verification Report at page 13 and Exhibit CVE-16 .

⁹⁷ See the petitioners' case brief at page 25.

⁹⁸ See the petitioners' case brief at pages 25-26.

⁹⁹ The petitioners refer to Fresh Garlic Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 36168 (June 17, 2013) (Garlic from the PRC), and accompanying Issues and Decision Memorandum at Comment 14 for the Department's definition of a by-product.

¹⁰⁰ The petitioners cite the Cost Verification Report at page 28.

¹⁰¹ The petitioners point to the SDQR at page 6.

production of the South African product, none actually was used.¹⁰² The petitioners allege that, during the course of verification, the Department found that some of the wire rod consumed in the production of the merchandise sold to South Africa was provided by SIW's affiliate. The petitioners conclude that because SIW claims to always make wire rod to the highest specification, meaning always to CXT's proprietary specification, the affiliated party wire rod inputs also were potentially used in the production of merchandise produced for CXT.

SIW argues that the Department should reject the petitioners' characterization of small coils and remnants/short coils as scrap and, instead, accept SIW's cost calculations with respect to these products. SIW argues that the petitioners' allegation that small coils and remnants/short coils are scrap is based on a mischaracterization of those products. According to SIW, these products pass through each of SIW's PC tie wire production processes and, as such, absorb exactly the same costs as large coils.

SIW maintains that the Department verified that these products are recognized as finished goods by SIW's production control system, are inventoried in SIW's finished goods warehouse, and are sold at different prices typical of regular merchandise to customers who can utilize merchandise that is made available in smaller quantities. SIW contends that the Department's Cost Verification Report also makes clear that scrap, on the contrary, is not inventoried and is sold in bundled batches to local scrap dealers at much lower prices.¹⁰³ SIW counters that a review of the March 22, 2013, invoice, referenced by the petitioners in their case brief, shows that SIW assigns a product code and a product description when selling short coils. Furthermore, the prices for the two different short coils on this invoice indicate that the 7 millimeter (mm) coil is sold at a price that is higher than the price of the 9mm coil, reflecting the higher input cost and the longer processing time required. Finally, while both prices are lower than the typical price for large coils, the difference is not nearly as significant as in the case of scrap sales.¹⁰⁴ SIW also notes that the Department verified that SIW's Cost Variance Reports include the sales of scrap at the line "return scrap," and they show the amount of the revenue as a credit against the cost of raw materials.¹⁰⁵ SIW maintains that, in contrast, revenues earned from sales of small coils and short coils are not included as an offset against cost and are, instead, treated as sales of finished goods.

SIW refutes the petitioners' argument that SIW's allocation methodology resulted in significantly higher costs being allocated to small coils and remnants/short coils than to the merchandise produced to CXT's specifications. SIW asserts that these products are produced starting with exactly the same wire rod inputs as any other PC tie wire products and, as such, there is no reason to expect the per-metric-ton wire rod cost for a small coil to be different from that for a regular coil.¹⁰⁶

According to SIW, the data presented by the petitioners serve only to prove that, during the POI, the per-metric-ton cost for wire rod inputs consumed in the production of the U.S. and South Africa-bound products was lower than the per-metric-ton cost for all wire rod consumed in the

¹⁰² The petitioners cite the Cost Verification Report at page 3.

¹⁰³ SIW refers to the Cost Verification Report at page 35.

¹⁰⁴ See SIW's rebuttal brief at page 18.

¹⁰⁵ SIW cites the Cost Verification Report at CVE 10.

¹⁰⁶ SIW cites the Cost Verification Report at pages 11-12.

production of all PC tie wire products.¹⁰⁷ SIW maintains that the record evidence shows that, during the POI, SIW purchased wire rod in three dimensions: 8/9 mm, 11 mm, and 13 mm. Based on dimension alone, SIW asserts that 13 mm wire rod will have a lower per-metric-ton price than 8/9 mm or 11 mm wire rod because it takes less time to produce one metric ton of thick wire rod than it does to produce the same amount of thin wire rod.¹⁰⁸ Because SIW's U.S.- and South Africa-bound products are produced using 13 mm wire rod as the input material, which is the thickest and hence the cheapest type of wire rod consumed, SIW concludes that it is a mathematical certainty that the wire rod cost of these products will be lower than the overall average wire rod cost across all finished products, including those products that require the more expensive 8/9 mm or 11 mm wire rod inputs.¹⁰⁹ SIW asserts that the wire rod cost comparisons provided by the petitioners in their case brief prove that 13 mm wire rod costs less than the average of the 8/9 mm, 11 mm, and 13 mm wire rod costs.

The Department's Position:

For the final determination, we adjusted SIW's reported wire rod costs to reflect the POI weighted-average cost of the wire rod used in the production of the merchandise sold to the U.S. and South Africa.¹¹⁰ We also rejected SIW's allocation of wire rod costs to remnants/short coils, and instead treated the remnants/short coil as a scrap offset.¹¹¹

A. Bills of Material

We disagree with the petitioners' allegation that SIW created an alternative cost allocation reporting methodology based on inaccurate BOMs. In the normal course of business, the BOM for each finished product is developed and entered into the SAP system by the production department. The BOM reflects the original input requirements for the product. Although SIW may make changes to the BOM, those changes are not revised in the SAP system. In SIW's SAP system, the original product-specific BOM is used by the CO module to calculate the standard cost of that product. SIW did not rely on the product costs calculated by the CO module of its SAP system to determine the reported costs. Instead, SIW relied on the actual materials (based on dimension, grade, and coil weight) used in the production of PC wire during the POI and recorded in the SAP system to determine the reported wire costs.¹¹² SIW did rely on the yield rate reflected in the BOM's of the U.S. and South Africa product in its calculation of the reported costs. However, SIW adjusted the yield loss of the reported products to reflect SIW's actual production experience during the POI. Therefore, we disagree with the petitioners that SIW's cost allocation reporting methodology is based on inaccurate BOMs.

¹⁰⁷ SIW explains that because the company does not track the wire rod consumption of small coils and remnants/short coils on a product-specific basis, the per-unit wire rod cost assigned to these products is based on the average wire rod costs of all PC tie wire. See the Cost Verification Report at page 34.

¹⁰⁸ See SIW's rebuttal brief at pages 20-21.

¹⁰⁹ See id.

¹¹⁰ See Final Cost Memo for details of the Department's wire rod calculations.

¹¹¹ See id.

¹¹² See Cost Verification Report at page 33; see also id. at page 34 where the Department stated, "During our testing of material costs, we confirmed that the wire rod costs reported for the CONNUMs identified at I.B, above, are specific to the wire rod consumed in the production of those CONNUMs."

B. Weighted-Average Costs

We agree with the petitioners that SIW's wire rod costs should reflect a POI weighted-average value of the wire rod used to manufacture the products sold to the United States and South Africa. The Department's normal practice is to use POI annual average costs to calculate COP.¹¹³ The Department uses annual average costs in order to even out swings in the production costs experienced by the respondent over short periods of time. This way, we smooth out the effect of fluctuating raw material costs, erratic production levels, major repairs and maintenance, inefficient production runs, and seasonality.¹¹⁴ Fluctuations in raw material costs, in particular, can be influenced by discretionary business practices such as the inventory valuation method used by the company (e.g., first-in, first-out, weighted-average, specific identification, etc.), purchase transaction terms, purchase dates, the raw material inventory turnover period, the extent to which raw materials are purchased pursuant to long-term contracts, and whether finished merchandise is sold to order or from inventory. Over a reasonable period of time, these factors tend to smooth out, resulting in an average cost that reasonably reflects the COP for sales of a particular product made during the POI.

Furthermore, the costs a respondent reports to the Department should reflect cost differences attributable to the different physical characteristics of the merchandise under consideration.¹¹⁵ This approach ensures that the product-specific costs we use for the below-cost test reflect the costs incurred by a respondent to obtain the corresponding product's physical characteristics. This principle is supported by section 773(a)(6)(c)(ii) of the Act, which requires the Department to account for and adjust for any differences attributable to physical differences between the subject merchandise and the foreign like product if similar products are compared in the analysis of home-market (or third-country market) and U.S. prices. Such comparison criteria are logical because physical characteristics provide the Department with a dependable, measurable means of comparing two different products sold in two different markets. Similarly, 19 CFR 351.411(b) states that, when making this adjustment, "[t]he Secretary will consider only differences in variable costs associated with the physical differences." Thus, when additional factors unreasonably influence the allocation of costs, it is the Department's practice to adjust a company's reported allocation methodology to reflect costs based solely on physical characteristics.¹¹⁶ In SSB from the UK, the Department explained its policy of not allowing cost differences when such cost differences are attributable to factors beyond physical characteristics (such as situations

¹¹³ See e.g., Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35248 (June 12, 2013), and accompanying Issues and Decision Memorandum at Comment 6.

¹¹⁴ See e.g., SSB from the UK, and accompanying Issues and Decision Memorandum at Comment 1; Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (November 8, 2005), and accompanying Issues and Decision Memorandum at Comment 1; Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 55 FR 26225 (June 27, 1990) at Comment 10; and Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47256 (September 8, 1993).

¹¹⁵ See e.g., Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review, 76 FR 12700 (March 8, 2011), and accompanying Issues and Decision Memorandum at Comment 1, which was affirmed in Thai Plastic Bags Industries Co., Ltd. v. United States, 2014 WL 1272840 (CAFC March 31, 2014) (Thai Bags CAFC).

¹¹⁶ See *id.*

where the merchandise is produced at separate facilities, or the cost differences are high even though the physical differences appear to be small).¹¹⁷ In such instances, we have adjusted costs to address the distortion. This policy has been recently upheld in Thai Bags CAFC.

SIW calculated its reported wire rod costs by first determining the actual wire rod (by grade, dimension, and coil weight) used in the production of the U.S. and South African products. Because the weight of the wire rod coil used in production of the U.S. and South African products differs, SIW isolated the wire rod costs between these products based on coil weight. SIW calculated the monthly wire rod costs by dividing the total monthly consumption cost of that input (identified by grade, dimension, and coil weight) by the total production of all finished goods produced from that input. SIW then weight-averaged the wire rod costs for the U.S. and South African products on a monthly basis using the monthly wire rod consumption cost and the standard input quantity for the finished products manufactured during the month.¹¹⁸ SIW then adjusted the resulting monthly costs for actual monthly yield losses. SIW calculated the POI average per-unit wire cost by dividing the total monthly wire rod costs by total monthly finished production quantities. The resulting per-unit costs were then adjusted for small coil and remnant/coil production. Finally, SIW increased the per-unit costs of the U.S. and South African products to account for reconciling differences between the calculated costs and SIW's normal books and records.¹¹⁹ Consistent with SIW's arguments, this methodology does not rely on specific coil costs. However, the methodology does not comply with the Department's normal practice of calculating a POI weighted-average raw material cost. Furthermore, SIW's calculations distinguish wire rod costs based on coil weight, which is not one of the Department's physical characteristics.

For the final determination, we adjusted SIW's reported wire rod costs for the U.S and South African products to reflect the POI weighted-average cost of the grade and dimension of the wire rod used in the production of that merchandise.¹²⁰ Because we disagree with the petitioners' allegation that the product sold to South Africa is secondary merchandise that was originally destined for the U.S. customer, CXT, we have not calculated the POI weighted-average wire rod costs based solely on the production quantity of the U.S. product, as suggested by the petitioners. Furthermore, our adjustment accounts for SIW's actual yield losses incurred during the POI.¹²¹

In response to the petitioners' arguments regarding the grade 82B wire rod inputs to PC strand, we note that the petitioners' allegations are based on one inventory adjustment examined at verification that involved grade 82B wire rod.¹²² There is no other record information that indicates that the wire rod used in the production of the U.S. and South African product was used in the manufacture of PC strand. Furthermore, a comparison of the per-unit cost of the wire rod transferred to the PC strand division to the per-unit cost of the same wire rod consumed by the PC

¹¹⁷ See SSB from the UK and accompanying Issues and Decision Memorandum at Comment 1.

¹¹⁸ The standard input quantity was determined by increasing the finished goods output quantities by the yield loss rate reflected on the BOMs of the products.

¹¹⁹ See the Cost Verification Report at pages 28-30 for a detailed explanation, and CVE 10 for the product cost calculations.

¹²⁰ See Final Cost Memo for details of the Department's wire rod calculations.

¹²¹ See id.

¹²² See CVE 10.

wire division shows that the per-unit wire rod cost of the transferred wire rod was less than the per-unit wire rod cost consumed.¹²³ As such, any allegations the petitioners make regarding the shifting of wire rod costs by SIW away from the PC wire division, and ultimately the costs of the U.S. and South African products, are unsupported by the facts on the record.

C. Small Coils and Remnants/Short Coils

We disagree with the petitioners that small coils are scrap products resulting from the PC tie wire production process. We do agree, however, that remnants/short coils are scrap products resulting from the PC tie wire production process and revised SIW's wire rod costs accordingly.¹²⁴

The National Association of Accountants (NAA) defines a joint product as two or more products so related that one cannot be produced without producing the other(s), each having relatively substantial value and produced simultaneously by the same process up to a split-off point.¹²⁵ The NAA defines a by-product as a secondary product recovered in the course of manufacturing a primary product, the total sales value of which is relatively minor in comparison with the sales value of the primary product.¹²⁶ Similarly, the products in a jointly produced group often vary in importance. Products of greater importance are called major products and products of minor importance are called by-products. When two or more major products appear in the same group, they are called co-products. The term "joint product" includes major product, co-product, and by-product because all are produced jointly.¹²⁷ Technically, the issue of whether to allocate full production costs to the small coils and remnants/short coils is not a joint product issue. The issue here is whether the small coils and remnants/short coils can still be used in the same applications as the merchandise under consideration.

The small coils and remnants/short coils are the same product as the merchandise under consideration. Small coils are prime PC tie wire that is produced in smaller coil weights than regular PC tie wire (i.e., the total length of the PC tie wire in small coils is less than the length of the PC tie wire in the coils of the merchandise under consideration). Small coils are generated as a result of machine or electrical disruptions in the drawing process. As this merchandise is considered prime product, SIW treats small coils in the same manner as regular grade A PC tie wire for cost and financial accounting purposes. Remnants/short coils are the heads or tails of the regular PC tie wire coils. Short coils do not meet the mechanical requirements of grade A PC tie wire, are generally 80 meters in length, and typically result from restarting the production process. Short coils are inventoried and allocated production costs in the normal course of business.¹²⁸

In this case, the record evidence shows that small coils are sold for use in the same applications as the merchandise under consideration while remnants/short coils are not.¹²⁹ The sales prices of the

¹²³ See CVE 10.

¹²⁴ See Final Cost Memo.

¹²⁵ See Management Accountants' Handbook, Fourth Edition; Keller, Bulloch and Shultis at 11.6.

¹²⁶ See *id.*

¹²⁷ See *id.*

¹²⁸ See the Cost Verification Report at page 12.

¹²⁹ See CVE 5.

small coils are closely aligned to the sales prices of regular PC tie wire, while the sales prices for remnant/short coils are more closely aligned to SIW's sales prices of scrap.¹³⁰ Furthermore, the invoices for the sales of remnants/short coils examined by the Department at verification provide further evidence that remnants/short coils are scrap-type products resulting from the PC tie wire production process.¹³¹

Therefore, for the final results, we have accepted SIW's wire rod calculations for small coils but adjusted the wire rod calculations to reflect the treatment of remnants/short coils as scrap resulting from the PC tie wire production process. As such, we have eliminated the allocation of wire rod costs to remnants/short coils and have, instead, offset SIW's wire rod costs with the revenue from the sales of the remnant/short coils.¹³²

In response to the petitioners' assertions that the wire rod purchased by SIW from an affiliate may have been used in the production of the U.S. product, we note that the Department verified and explained in detail why the wire rod purchased from the affiliated party could not be used by SIW to manufacture the U.S. product.¹³³

Comment 4: G&A Expenses

The petitioners assert that SIW failed to account for G&A expenses incurred by Tata Steel on SIW's behalf in SIW's reported G&A expense ratio. According to the petitioners, the Department's practice is to include an amount in the numerator of a respondent's G&A expenses for administrative services performed by the parent company or other affiliated party on the respondent's behalf.¹³⁴ The petitioners conclude that because the record evidence shows that Tata Steel is involved in administering SIW's SAP system, Tata Steel is providing administrative services to SIW. As such, the petitioners contend that the Department should add Tata Steel's G&A expense ratio of 8.92 percent, based on Tata Steel's March 31, 2013, financial statements, to SIW's G&A ratio for purposes of calculating SIW's per-unit G&A expenses.¹³⁵

SIW refutes the petitioners' argument that an adjustment to SIW's G&A ratio is warranted. SIW alleges that the petitioners' argument that Tata Steel maintains an active involvement in SIW's operations is contradicted by the record. SIW cites to the Department's Cost Verification Report where the Department verified that Tata Steel's Thai wire rod plant complained to the Thai Ministry of Commerce (MOC) regarding SIW's failure to purchase wire rod domestically from Tata Steel's Thai wire rod plant.¹³⁶ According to SIW, the Cost Verification Report makes it clear

¹³⁰ See the Cost Verification Report at 13 for a comparison of the per-unit sales prices of regular PC tie wire, small coils, remnants/short coils, and scrap.

¹³¹ See the Final Cost Memo for the business proprietary discussion of this evidence.

¹³² See Final Cost Memo.

¹³³ See the Cost Verification Report at 31 and 32 for the business proprietary discussion of why the wire rod purchased by SIW from an affiliated party could not be used in the manufacture of the U.S. product.

¹³⁴ The petitioner cites Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum at Comment 15.

¹³⁵ See the petitioners' case brief at Attachment 2.

¹³⁶ SIW refers to the Cost Verification Report at pages 31-32 and Exhibit CVE 12.

that when a dispute arose between SIW and Tata Steel's Thai wire rod plant, the wire rod plant filed its complaint with Thailand's MOC and not with its parent company in India. Likewise, when responding to this complaint, SIW addressed it with the MOC and the Thai wire rod plant with no involvement by Tata Steel. According to SIW, this evidence clearly shows that SIW is operationally independent enough to reject the requests of a sister company to purchase its wire rod, rather than purchase it from an unaffiliated company in China. SIW asserts that Tata Steel does not maintain active involvement in SIW's operations in general nor does it control more than a few of the higher level features of SIW's accounting system. Although Tata Steel installed and initiated SIW's SAP system, SIW alleges that Tata Steel's only subsequent involvement has been basic IT-level support. SIW asserts that Tata Steel's lack of assistance in resolving SIW's SAP problems explicitly underscores the very limited involvement of Tata Steel in SIW's operations.¹³⁷

The Department's Position:

We relied on SIW's reported G&A expense ratio to calculate the per-unit G&A expenses for the final determination. The record clearly states, consistent with the petitioners' allegation, that Tata Steel provided IT services to SIW during the POI.¹³⁸ Furthermore, the record shows that SIW paid for these services and such payments are included in the reported costs.¹³⁹ Because the costs incurred by Tata Steel on behalf of SIW have already been included in the reported costs, we find it unnecessary to adjust SIW's G&A expense ratio.

Comment 5: Calculation of Credit Expenses for U.S. and South African Sales

Neither SIW nor its U.S. affiliate, TSIA, had U.S. dollar short-term borrowings during the POI. SIW calculated credit expenses on its U.S. sales using an interest rate derived from the intercompany U.S. dollar loans outstanding of its parent, Tata Steel, and calculated credit expenses on its third-country sales based on offers of U.S. dollar interest rates from its bank in Thailand.

The petitioners argue that SIW incorrectly used different U.S. dollar interest rates to calculate credit expenses on its sales to the United States and South Africa. The petitioners cite to the Department's Policy Bulletin in support of their claim that when a respondent does not have borrowings in the currency of the transaction, the Department's long-standing practice is to use publicly available information to establish a short-term interest rate.¹⁴⁰ Accordingly, the petitioners maintain that, because SIW did not report POI borrowings or an average short-term lending rate calculated by the Federal Reserve, as facts available, the Department should use the U.S. dollar borrowing rate reported in SIW's SQR3 at Exhibit B-59 to calculate credit expenses for U.S. and third-country sales.

SIW maintains that the U.S. dollar interest rates it used in its credit reporting are appropriate, claiming that they were fully reported and documented during the investigation and neither the

¹³⁷ SIW refers to the Cost Verification Report at pages 15-16.

¹³⁸ See SIW's DQR at page 5.

¹³⁹ See e.g., the Cost Verification Report at pages 21 and 37.

¹⁴⁰ See Import Administration Policy Bulletin 98.2; Imputed credit expenses and interest rates, available at <http://enforcement.trade.gov/policy/bull98-2.htm> (February 23, 1998) (Policy Bulletin).

petitioners nor the Department suggested that there were any irregularities with respect to them. SIW asserts that the Department's practice, as described in the Antidumping Questionnaire, requires companies without borrowings to use a published commercial short-term lending rate relevant to the company. However, according to SIW, the Department does not require the same rate to be used for different companies under different circumstances. Moreover, SIW argues that TSIA's interest rate is not a theoretical rate, but is based directly on the actual experience of its parent Tata Steel's borrowings in U.S. dollars in the United States.

With respect to SIW's sales to South Africa, SIW explains that, because it does not have actual dollar borrowing experience in either Thailand or South Africa, it obtained rate offers from its bank and used the average offered rate, because no published rate for U.S. dollar borrowings in Thailand exists. SIW contends that SIW in Thailand would not qualify for a U.S. dollar commercial interest rate on the same basis as the U.S. companies surveyed for the Federal Reserve rate. Moreover, SIW protests that using the Federal Reserve rate to estimate what rate SIW might be able to obtain in support of its extension of credit to South Africa would not meet the Department's stated goal that "the surrogate be reasonable" and that it reflect a rate "actually realized by borrowers in the course of "usual commercial behavior."¹⁴¹ Accordingly, SIW argues that the Department should continue to use the verified rates SIW reported to calculate imputed credit expenses.

The Department's Position:

In cases where a respondent has no short-term borrowings in the currency of the transaction, we use publicly available information to establish a short-term interest rate applicable to the currency of the transaction.¹⁴² For U.S. dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses.¹⁴³

In establishing a preferred surrogate U.S. dollar short-term interest rate in cases where respondents have no U.S. dollar short-term loans, we have generally employed three criteria: 1) the surrogate rate should be reasonable; 2) it should be readily obtainable and predictable; and 3) it should be a short-term interest rate actually realized by borrowers in the course of "usual commercial behavior."¹⁴⁴ With respect to U.S. sales, although SIW argues that TSIA's reported interest rate is not a theoretical rate because it is based directly on the actual experience of its parent's borrowings in U.S. dollars in the United States, the information on the record pertains to borrowings between affiliated parties within the Tata Steel Group, and there is no evidence on the record that these borrowings reflect arm's-length transactions.¹⁴⁵ Therefore, we do not find it reasonable to use this rate in the calculation of credit expenses for U.S. sales. With respect to third-country sales and SIW's contention that its reported interest rate is more appropriate than the Federal Reserve rate, we note that SIW's rate is not based on actual U.S. dollar borrowings and,

¹⁴¹ See Policy Bulletin.

¹⁴² See id., at page 4.

¹⁴³ In this case, sales to the United States and South Africa were made in U.S. dollars.

¹⁴⁴ See Policy Bulletin at page 3.

¹⁴⁵ See SVE 52.

therefore, is not actually realized by SIW in the normal course of business. It is also not a publicly available rate.

For these reasons, for the final determination we calculated a POI-average interest rate based on Federal Reserve rates, and used this rate to calculate credit expenses for both U.S. and South African sales.¹⁴⁶

Comment 6: Calculation of Indirect Selling Expenses for U.S. Sales

At the commencement of verification, SIW revised its original calculation of indirect selling expenses for U.S. sales because it determined that it could not adequately demonstrate its expense allocation methodology.¹⁴⁷ As we learned while verifying the expense, SIW's methodology accounted for the activity of another affiliate, Tata Steel USA Inc. (TSUSA). SIW explained at verification that TSIA performs support services for TSUSA, but its financial activity is not included in the TSIA consolidated financial statement.

The petitioners argue that the Department should reject SIW's recalculated U.S. indirect selling expense (INDIRSU) ratio, which was presented at the beginning of verification. According to the petitioners, the revised INDIRSU ratio was based on a methodology incorporating new factual information concerning TSIA services performed for TSUSA, as reported by the Department in the Sales Verification Report.¹⁴⁸ In lieu of this untimely new information, the petitioners believe the Department should rely on a ratio derived from TSIA's financial statement as facts available.¹⁴⁹

SIW defends its INDIRSU methodology as appropriate because it accounts for the activity performed by TSIA that supports TSUSA activities. According to SIW, relying on the TSIA financial statement SG&A expense and sales revenue data to calculate the INDIRSU ratio would include the full expenses of both TSIA and TSUSA in the numerator, but only the reported revenues in TSIA's financial reports in the denominator. SIW claims that that this methodology unreasonably exaggerates the INDIRSU ratio.

SIW asserts that the petitioners do not object to the substance or theory of SIW's INDIRSU ratio methodology, but only to the timing of its presentation. SIW states that it did not conceal TSUSA's relevance to the investigation as it was identified as an affiliate in the QRA.¹⁵⁰ SIW maintains that the INDIRSU ratio must account for TSUSA expenses because much of the selling activity performed by TSIA in the U.S. office supports TSUSA's activities. Specifically, SIW contends that many of TSIA's administrative and management personnel expenses are incurred by TSIA, but those activities substantially support TSUSA's business as well. At the same time,

¹⁴⁶ See Final Determination Calculation Memo.

¹⁴⁷ See SVE 37.

¹⁴⁸ See Sales Verification Report at page 28, footnote 23.

¹⁴⁹ Specifically, the petitioner refers to a methodology using the TSIA financial statement SG&A expense total and dividing it by the TSIA financial statement net sales revenue total, as noted in the Sales Verification Report at page 28 and footnote 21.

¹⁵⁰ See QRA at Exhibit A-4.

SIW notes that the sales revenue recorded in TSIA's financial statement does not include the value of sales by TSUSA. SIW asserts that its methodology, as reviewed by the Department at verification, properly accounts for sales and expenses on the same basis¹⁵¹ and should be used in the final determination.

The Department's Position:

We agree with the petitioner that SIW's methodology presented at verification was based on new factual information that was not on the record prior to our verification. The deadline date for the submission of new factual information in this investigation was the date of SIW's response to the Department's last supplemental questionnaire issued prior to verification, *i.e.*, December 23, 2013.¹⁵² Moreover, under 19 CFR 351.302(c), SIW could have requested, in writing, that the Department extend the applicable deadline, but it did not do so. On multiple occasions, the Court of International Trade has upheld the Department's rejection of untimely new factual information when the party providing the information did not (1) submit a timely request in writing to extend the applicable deadline or (2) provide good cause for extending the deadline.¹⁵³

As SIW explained at verification¹⁵⁴ and in its rebuttal brief,¹⁵⁵ the rationale for its INDIRSU ratio methodology is to account for the activity it claims TSIA performed for TSUSA that would not be adequately accounted for if the INDIRSU ratio were calculated based on TSIA financial statement expense and revenue data. SIW states in the rebuttal brief that "SIW did not discuss TSUSA in detail in its previous responses because TSUSA is not involved in the production or sale of wire products."¹⁵⁶ However, TSUSA is relevant to the allocation methodology SIW proposes for calculating the INDIRSU ratio. Other than identify TSUSA as a company affiliated with TSIA, SIW did not provide any information about TSUSA and its relevance to the INDIRSU methodology until verification was underway, as we explained in the Sales Verification Report:

We note that SIW had not previously described TSUSA or TSIA's activities in support of TSUSA's business prior to verification. SIW also had not submitted any TSUSA financial accounting information prior to verification. Finally, SIW did not submit either the TSE (Tata Steel Europe, Ltd.) or TSN (Tata Steel Nederland BV) financial statements, in which we assume TSUSA's expenses are consolidated (SIW did not specify at verification which of these entities incorporates the TSUSA financial data in its financial statement), nor did it provide either financial statement at verification.¹⁵⁷

While we were able to review the numerical data used in SIW's revised INDIRSU methodology at verification, and to tie elements of it to TSIA's financial records, we could not, for example, tie

¹⁵¹ See Sales Verification Report at Exhibits 37 and 56. SIW provided an alternate, value-based version of its quantity-based allocation methodology at Sales Verification Report Exhibit 54.

¹⁵² See 19 CFR 351.301(c)(1)(ii).

¹⁵³ See *e.g.*, Foshan Nanhai Jiujiang Quani Li Spring Hardware Factory v. United States, 920 F. Supp. 2d 1350, 1360 (Ct. Int'l Trade 2013).

¹⁵⁴ See Sales Verification Report at pages 27-29.

¹⁵⁵ See SIW Rebuttal Brief at pages 35-36.

¹⁵⁶ See *ibid.* at page 35.

¹⁵⁷ See Sales Verification Report at page 28, footnote 23. In addition, we note that SIW's discussion of the activities TSIA performs on behalf of TSUSA at pages 35-36 of the SIW Rebuttal Brief lacks any cite to the record.

TSUSA's trial balance information to any financial statement. More importantly, because SIW had not previously submitted information concerning TSIA's activities on behalf of TSUSA, we were not prepared to verify whether TSIA actually performed these activities. Furthermore, we noted at verification that TSUSA pays TSIA an amount for TSIA support of TSUSA activities. SIW stated at verification that this amount does not adequately reflect all of TSIA's work performed on behalf of TSUSA.¹⁵⁸ However, we had no basis on the record to verify this claim and, thus, were unable to confirm the accuracy of this assertion. Therefore, we cannot accept SIW's contention that relying on TSIA's financial statement data would result in overstating the INDIRSU expense.

When a respondent sells to U.S. customers through a U.S. affiliate that is engaged solely in selling operations, as in this case, our normal practice is to treat all SG&A expenses incurred by that affiliate as indirect selling expenses, except for those expenses reported separately.¹⁵⁹ SIW makes an argument to adjust the application of this practice, but, as discussed above, it failed to support its substitute methodology with sufficient and timely information on this record. Accordingly, we recalculated the INDIRSU ratio based on the SG&A expenses in the 2012-2013 TSIA financial statement (less movement and selling expenses reported separately) divided by the corresponding TSIA sales revenue.¹⁶⁰

Comment 7: Use of Average-to-Average Price Comparisons

SIW claims that the Department inadvertently used the average-to-transaction price comparison methodology in the Preliminary Determination even though it stated in the Preliminary Determination Decision Memo that the average-to-average methodology was used for making comparisons of CEP to NV.¹⁶¹ SIW believes that the Department intended to use, and should use, average-to-average price comparisons in the final determination.

The petitioners argue that, because both margins (i.e., average-to-average and average-to-transaction) were de minimis, the issue is moot. The petitioners reason that because the price comparison methodology that the Department relies on for the final determination is fact-driven, and dependent on the differential pricing analysis, the final determination may differ from the preliminary determination.

The Department's Position:

We preliminarily determined to use the average-to-average method for all U.S. sales in making comparisons of CEP and NV for SIW because there was not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average comparison

¹⁵⁸ See Sales Verification Report at page 28.

¹⁵⁹ See e.g., Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum at Comment 15; and Stainless Steel Sheet and Strip From the Republic of Korea: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶⁰ See Final Determination Calculation Memo for further details of this calculation.

¹⁶¹ See Preliminary Determination Decision Memo.

method and the average-to-transaction comparison method.¹⁶² Therefore, as suggested by SIW, the preliminary weighted-average dumping margin should have been 0.00 instead of 0.07. However, the issue is moot because both the preliminary and final determination margins in this case (i.e., average-to-average and average-to-transaction) are de minimis.¹⁶³ No cash deposits were required at the preliminary determination even with the incorrectly calculated weighted-average dumping margin.

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the Federal Register.

Agree

Disagree



 Paul Piquado
 Assistant Secretary
 for Enforcement and Compliance

28 APRIL 2014
 (Date)

¹⁶² See memorandum entitled “The Siam Industrial Wire Co., Ltd. Preliminary Determination Margin Calculation,” dated December 5, 2013.

¹⁶³ See memorandum entitled “Final Determination Margin Calculation for The Siam Industrial Wire Co., Ltd.,” dated concurrently with this memorandum.