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December 17, 2012

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

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

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in  
the Antidumping Duty Investigation of Utility Scale Wind Towers  
from the Socialist Republic of Vietnam

**SUMMARY:**

We have analyzed the case briefs, and rebuttal briefs, submitted by interested parties in the antidumping duty investigation of utility scale wind towers from the Socialist Republic of Vietnam (“Vietnam”). As a result of our analysis, we have made changes to the *Preliminary Determination*.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments.<sup>1</sup>

**Case Issues:**

1. Steel Plate
2. Surrogate Financial Statements
3. Financial Ratio Adjustments
4. Packed Weight and the Sum of Factors of Production (“FOPs”)
5. Scrap Offset
6. Market Economy Purchases
7. Idle Labor
8. Oxygen
9. Carbon Dioxide (CO<sub>2</sub>)
10. Base Rings
11. Brokerage & Handling

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<sup>1</sup> At the conclusion of this memorandum is a “Table of Shortened Citations,” providing full citations and corresponding abbreviations to authorities and other materials relied upon by the Department of Commerce (“Department”) in this memorandum.



12. Date of Sale
13. Free-of-Charge Inputs

### **Background:**

The Department published its preliminary determination of sales at less than fair value (“LTFV”) and postponement of final determination on August 2, 2012.<sup>2</sup> Between August 13, 2012 and August 24, 2012, the Department conducted verification of the mandatory respondent CS Wind Vietnam Co., Ltd. (“CS Wind Vietnam”) and its parent company CS Wind Corporation (collectively “CSWG”). On October 2, 2012, CSWG and The Wind Tower Trade Coalition (“WTTC”)<sup>3</sup> submitted case briefs. On October 9, 2012, CSWG and the WTTC submitted rebuttal briefs. On September 4, 2012, the WTTC requested a hearing. However, on October 23, 2012, the WTTC withdrew its request for a hearing and no other parties requested a hearing. Accordingly, no hearing was held in this investigation.

### **DISCUSSION OF THE ISSUES**

#### **Comment 1: Steel Plate**

##### *WTTC’s Arguments*

- The steel plate consumed by CSWG is alloy steel and should be valued using the Global Trade Atlas (“GTA”) Indian import data under the Harmonized Tariff Schedule (“HTS”) subheading for alloyed steel plate. If the Department determines not to use the alloy steel surrogate suggested by the WTTC, the Department should use an average of the GTA Indian import values for the carbon and the alloy steel HTS subheadings.
- Exports from the country from which CSWG sourced the steel plate consumed in the production of subject merchandise into Vietnam show that almost all of the exports from that particular country during the period of investigation (“POI”) were classifiable as alloy steel.<sup>4</sup>
- The Department verified that the CSWG used high-strength low-alloy (HSLA) steel in the production of the subject merchandise. The American Iron and Steel Institute (AISI) defines HSLA as a specific group of steel which contains moderate amounts of one or more alloying elements.<sup>5</sup> As a result, HSLA steel plate sells for a significant premium above standard carbon commodity grade steel plate.
- Grade S355 steel plate consumed by CSWG in the production of utility scale wind towers is not a standard commodity grade carbon steel plate but rather HSLA plate.<sup>6</sup> Grade S355 steel plate has similar chemical and physical properties to American Standard for Testing and Materials (“ASTM”) A709. The price premium for grade S355 steel plate is confirmed by certain purchase invoices placed on the record by CSWG.

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<sup>2</sup> See *Preliminary Determination*.

<sup>3</sup> The WTTC is comprised of Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc. See Petition.

<sup>4</sup> See the WTTC’s case brief at 12.

<sup>5</sup> See *id.*, at 15.

<sup>6</sup> The WTTC refers to the Department’s Verification Report at 34 and 36.

- A review of the chemical properties listed on the mill certificates examined by the Department during verification demonstrates that the steel plate is alloy steel.<sup>7</sup> The mill certificates provided to CSWG by the supplier may have been manipulated by the suppliers in order to avoid certain tariffs imposed by the Vietnamese government on alloy steel.
- The Indian statistics meet each of the Department’s criteria and are the only data on the record suitable for use as surrogate value for steel plate.
- The India Infodrive data submitted by the WTTC affirmatively show that the only Indian HTS subheading that covers actual transaction-based pricing data for S355 grades of steel plate is HTS 72085110.<sup>8</sup> The Infodrive data also show that the pricing of S355 grade steel plate from fair-traded countries sells at a significant premium. CSWG has failed to demonstrate that the Indian imports statistics are aberrational.
- The Steel India, Joint Plant Committee (“JPC”), Steel Chamber Weekly, MEPS International Ltd. (“MEPS”), or Steel Business Briefing (“SBB”) pricing data placed on the record by CSWG provide prices for base grade commodity carbon steel rather than the specialized HSLA grade S355 steel plates that CSWG purchases. CSWG’s own documents confirm that these domestic prices do not reflect the specialized steel plate grade purchased by CSWG for the production of utility scale wind towers. As such, the prices of the standard commodity base carbon grades do not provide the best available information on the record.
- The Steel India data are based on market surveys from “wholesalers, commission agents, and bulk buyers” rather than actual transaction pricing as is the case with the values in the Indian HTS subheading 72085110.
- The fact that the Steel India data may cover 17 individual thicknesses of steel plate is of no consequence because the Steel India data do not cover the grade of steel plate that CSWG actually consumed. Varying dimensions of steel plate are captured in the overall weight of the plate and, as a result, steel plates are sold based on weight rather than size.
- CSWG’s reliance on *Steel Hangers from the PRC*, and accompanying Issues and Decision Memorandum (“IDM”) at Comment 4 as evidence that the Department had previously found JPC data to be more specific for wire rod purchases is misplaced because the grade and chemistry of the wire rod in that case were not at issue and size may have been relevant. Unlike steel plate, wire rod has *only one dimension – diameter*. Therefore, the lone size characteristic is more relevant to the overall size of the steel wire rod.
- The Metal Expert data submitted by CSWG are titled “prices and quotations” and it is therefore unclear whether the prices provided are based on prices actually paid within India during the POI or whether they are just price quotes. The data also appear to include imports of steel plate from the People’s Republic of China (“PRC” or “China”) and it is unclear as to whether it includes prices from countries like Indonesia and Thailand. Metal Expert is not a widely-recognized source of reliable pricing data. Moreover, the Metal Expert documentation indicates that the prices exclude taxes, but it does not specify which taxes are excluded.

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<sup>7</sup> See the WTTC’s case brief at 15.

<sup>8</sup> See the WTTC’s September 14, 2012, submission at exhibit 15.

- The SBB pricing data are unclear as to whether the prices which include “duty and 4% VAT” include the correct amount of duty or value added tax (“VAT”).
- The MEPS data are flawed because the evidence provided by CSWG shows that only “local taxes” are excluded from the prices. The evidence does not indicate the specific taxes excluded or whether the exclusion covers VAT and other duties.
- The JPC, Steel Chamber Weekly, MEPS or SBB pricing sources confirm that the Steel India prices submitted by CSWG do not reflect the price premium associated with HSLA steel plate rather than corroborate the Steel India prices as alleged by CSWG.
- Contrary to CSWG’s assertions, the Infodrive data do not corroborate the domestic prices but rather demonstrate that the HTS subheading 72085110 captures the exact grade of steel plate consumed by CSWG. The Infodrive data also show that the import prices are reflective of the global price premium associated with HSLA. The Ukrainian entries for S355 steel plate included in the Infodrive data and cited by CSWG are outliers as a result of unfair trade practices. The overall average price in the Indian HTS subheading shows that the majority of S355 entries from fairly-traded countries are priced at or above the average price for the HTS subheading and are broadly reflective of other types of steel plate entering India during the POI.
- India export prices do not corroborate the Steel India prices. Indian export prices are distorted and should be disregarded as a result of generally available, non-industry specific export subsidies identified in other proceedings conducted by the Department.<sup>9</sup>
- The Department should disregard CSWG’s argument that European Union (“EU”) domestic prices, import prices from East Asia, and domestic prices in Russia, Ukraine, and Turkey corroborate the Steel India prices because these countries are not listed on the Department’s Surrogate Country Memorandum.
- Contrary to CSWG’s assertions, evidence on the record indicates that large wind tower producers in India import the steel plate used in consumption of utility scale wind towers.

#### *CSWG’s Arguments*

- The steel plate consumed in the production of the subject merchandise is non-alloy steel plate.
- Steel India constitutes the best data source for valuing steel plate because it represents a broad market average of actual sales prices in India (the primary surrogate country); is contemporaneous; publicly available; tax exclusive, and product specific.
- The record evidence shows that the actual Customs’ declarations and HTS heading used by CSWG for its exports of S355 steel plate from China to Vietnam are non-alloy steel plates.<sup>10</sup>

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<sup>9</sup> According to the WTT C, *HR Flat Products from India*, and accompanying IDM provide a detailed description of the numerous countervailable subsidies provided to Indian steel producers (e.g., export financial schemes, reduction/exemption schemes from duties, special licensing programs, and loan guarantees). The Department has found that a program for less than adequate remuneration (“LTAR”) run by the Indian government is available to all producers that supply high grade iron ore to steel producers. According to the WTT C, the LTAR provision for iron ore necessarily flows through to all types of steel products manufactured, whether covered by the HR Flat Products from India order or the steel plate consumed by CSWG.

<sup>10</sup> See CSWG’s October 10, 2012, submission at 3.

- The disparity between the HTS numbers used by the Chinese and Vietnamese Customs offices further substantiates CSWG’s position that the Department must rely on actual domestic prices in India to value steel plate rather than Indian GTA data based on HTS categories.
- The WTTC’s allegation that the steel plate imported into Vietnam contains a certain alloying element is inconsistent with the mill test certificates (MTCs) submitted by CSWG.<sup>11</sup>
- ASTM 709 does not equate to the steel plate used by CSWG. The ASTM 709 specifications require certain contents of alloys, including the alloying element in question, while the European standards for S355 steel do not.
- HSLA steel plate is based on a U.S.-centric, generalized term that describes a certain class of steel product. It bears no relevance in this proceeding where the steel plate consumed in production of the subject merchandise is produced under European sanctioned and directed specifications.
- The WTTC contorts the facts regarding the chemistry and properties of CSWG’s steel plate. This statement is contradicted by the comparison of United States Steel Corporation’s (“U.S. Steel”) criteria for HSLA submitted by the WTTC, which shows the minimum composition ratios of a certain element, and the MTCs submitted by CSWG, which show that the composition of this element in the steel plate used by CSWG does not meet U.S. Steel’s threshold requirements.<sup>12</sup>
- Even if the WTTC’s arguments regarding the chemistry and properties of CSWG’s steel plate were correct, imputing the alloy categorization to all of the steel plate consumed by CSWG based on a small number of CSWG’s MTCs which reflect this element is legally unjustified and completely unsupported.<sup>13</sup>
- The India Infodrive data provided by the WTTC support the classification of CSWG’s steel plate as non-alloy steel.
- The record contains 15 data sources for valuing steel plate, the vast majority of which value the steel plate between \$0.68/kilogram (“kg”) and \$0.89/kg.<sup>14</sup> The one outlier is the GTA data relied on by the Department, with a value of \$1.20/kg, which is driven primarily by high priced imports from Austria, Belgium, and Germany.
- The Department’s preference, when given a choice between domestic data and imports statistics, is to use domestic data.<sup>15</sup>
- Steel India data are corroborated by prices cited in the other contemporaneous data sources on the record, including JPC domestic prices, which the Department has found superior to GTA data in numerous prior cases.<sup>16</sup> Steel India data are also corroborated by evidence placed on the record by the WTTC as well as the prices the Department preliminarily selected to value steel plate in *Wind Towers from the PRC*.<sup>17</sup>
- The dimension specifications for the pricing data in the Steel India, MEPS, and Steel Chamber publication are much more closely tailored to the exact specifications required

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<sup>11</sup> See *id.*

<sup>12</sup> See CSWG’s rebuttal brief at 4.

<sup>13</sup> See *id.*, at 21.

<sup>14</sup> See CSWG’s case brief at exhibit 1 for a schedule summarizing the 15 data sources and prices.

<sup>15</sup> CSWG cites *Tianjin Magnesium*, 722 F. Supp. 2d at 1333.

<sup>16</sup> See CSWG’s case brief at 11.

<sup>17</sup> See *id.*, at 9.

by CSWG's customers than the GTA data for HTS 72085110, which provide one average price for all thicknesses exceeding 10 millimeters ("mm"). As such, the domestic price data sources are more specific than the GTA import data to the steel plate FOPs being valued.

- The Department rejected the Steel India data in the *Preliminary Determination* because the record was not clear as to how the data were collected or the basis on which the data are presented. In its post-preliminary surrogate value submission, CSWG submitted a document, signed by a corporate official of Steel India, stating that Steel India's pricing data were neither quotations nor estimates but instead are based on actual, market price sales.<sup>18</sup> Further, the document shows that the prices were daily marketplace pricing reports obtained from Steel India's marketing executives by interacting with wholesalers in ten different markets within India.<sup>19</sup>
- The Steel India price of \$0.86/kg is corroborated by the similarity of prices reflected in the JPC, Steel Chamber, Steel Mint, MEPS, and Metal Expert publications and the GTA India export prices, specifically under HTS 72085110.
- CSWG has provided the necessary information to determine the tax-exclusive prices from the JPC, Steel Chamber, MEPS and SBB data.<sup>20</sup>
- The annual steel plate requirement of Indian wind tower producers for domestic steel plates exceeds the imported quantities of steel plate.
- The India Infodrive prices placed on the record by the WTTC corroborate the Steel India prices for grade S355 steel. The WTTC's data show that 96.85 percent of HTS 72085110 imported into India does not constitute grade S355 steel plate, thus confirming that the high priced steel imported into India from the EU was not the type of steel used by Indian companies to produce utility scale wind towers.
- The average unit value ("AUV") of the Grade S355 placed on the record of this case by the WTTC sorted by country of exportation results in the same surrogate value proposed by CSWG (*i.e.*, \$0.88/kg from all countries, \$0.84 from all countries excluding China, Korea, and Indonesia, and \$0.62 from Ukraine).
- The prices from Ukraine are particularly important in that the Department preliminarily selected Ukraine as the surrogate country in the *Wind Towers from the PRC* proceeding, Ukraine's per capita gross national income ("GNI") is closer to Vietnam's per-capita GNI than any of the EU nations, and the quantities of shipments from Ukraine to India are more consistent with the steel plated used to produce utility scale wind towers than the small shipments from the EU nations.
- The Steel India price data are further corroborated by the value of the Ukrainian imports preliminarily used by the Department in the *Wind Towers from the PRC* (*i.e.*, \$0.82/kg).
- The Department's decision in *HR Flat Products from India* does not apply to the instant case because the scope of that proceeding does not include the steel plate used in the production of the subject merchandise. The existence of a countervailing duty ("CVD") order on another steel product is not a sufficient basis to disregard the steel plate price placed on the record by CSWG.

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<sup>18</sup> See *id.*, at 10.

<sup>19</sup> See *id.*

- The record also reveals that companies producing steel plate in India did not report subsidies in their contemporaneous financial statements.<sup>21</sup>
- The Department can only reject the domestic Indian steel plate prices placed on the record by CSWG if it first determines that price distorting subsidies were paid to domestic producers with respect to domestic sales of steel plate during the POI.
- Indian domestic prices were not affected by subsidies during the POI as evidenced by the comparison of the domestic prices and the prices of steel plate produced and exported by numerous other countries at the same general level of development as India.
- The CTL Plate from India countervailing duty order was based on the Department's analysis of the respondent's activities between April 1, 1997 and March 31, 1998. The existence of this order does not create a presumption that Indian steel plate producers received price distorting subsidies during the POI for the instant case. Moreover, the courts have held that it is not reasonable to assume that subsidy programs, once established, exist in perpetuity.<sup>22</sup>

**Department's Position:** We agree with CSWG and continue to find that the steel plate consumed in the production of the subject merchandise is properly classified as non-alloy steel plate. We disagree with CSWG, however, in regard to the best data source available for valuing steel plate and have continued to value steel plate based on GTA India import data using HTS category 72085110.

The WTTC asserts that the steel plate used by CSWG to manufacture the subject merchandise is alloy steel because Vietnamese imports statistics show that all of the steel plate imported from the originating country was alloy steel plate.<sup>23</sup> We find this allegation unpersuasive in light of the record evidence and the Department's verification findings. CSWG submitted copies of all MTCs that accompanied the actual steel plate which was consumed in the production of the subject merchandise in its July 5, 2012, submission at exhibit S7-33. These MTCs, which were examined at verification,<sup>24</sup> identified the grades of the steel plate consumed (*i.e.*, grades S355K2, S355J2, or S355NL) and identified the steel plate as "non-alloy structural steel."<sup>25</sup> The grades of steel plate used in the production of the subject merchandise, which are mandated by CSWG's customer(s),<sup>26</sup> comply with European Standards, specifically EN 10025-2 and EN 10025-3.<sup>27</sup> These standards specifically state that steel grades S355 "shall be classified as non-alloy quality steels."<sup>28</sup> A comparison of the chemical and technical requirements of EN 10025-2 and EN 10025-3 to CSWG's submitted MTCs show that the steel plate complies with the requirements of EN 10025-2 and EN 10025-3.<sup>29</sup> CSWG's customer(s) also require that a final quality control ("QC") report for each tower section to be submitted to the customer(s) in order for CSWG to

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<sup>21</sup> See *id.*, at 29.

<sup>22</sup> See *id.*, at 30-31.

<sup>23</sup> See the WTTC's June 15, 2012, submission at 3, attachment C.

<sup>24</sup> See Verification Report at 36.

<sup>25</sup> See CSWG's July 5, 2012, submission at exhibit S7-33; Verification Report at 36 and VE 18.I.

<sup>26</sup> See Verification Report at 34 and VE 6 (providing CSWG's customer(s)' specifications and bill of materials ("BOM")).

<sup>27</sup> See Verification Report at VE 18.I (providing copies of the relevant pages of EN 10025).

<sup>28</sup> See Verification Report at VE 18.I.

<sup>29</sup> See CS Wind's July 5, 2012, submission at exhibit S7-33 and Verification Report at VE 18.1.

receive payment.<sup>30</sup> The final QC report for each section identifies the grades of steel plate used in the production of the finished product and includes copies of the related MTCs.<sup>31</sup> At verification, the Department examined selected QC reports on the subject merchandise and found the grades of steel plate identified in the reports to be consistent with the customer(s)' requirements of grades S355K2, S355J2, or S355NL.<sup>32</sup>

We find that the WTTC's assertion that CSWG's MTCs must have been manipulated because Vietnamese imports statistics show that all of the steel plate imported from the originating country was alloy steel plate to be unfounded. The WTTC has not provided any evidence of such manipulation and the Department did not find any evidence of manipulation when we examined the MTCs at verification.<sup>33</sup>

We find the WTTC's arguments that the steel plate used by CSWG is considered high-strength low-alloy steel plate under AISI<sup>34</sup> or ASTM standards to be irrelevant. The requirements of CSWG's customer(s) specifically identify the European Standard grade of steel by which the steel plate used in the production of the subject merchandise must comply.<sup>35</sup> The WTTC's use of steel plate manufactured in accordance with ASTM standards in the production of utility scale wind towers<sup>36</sup> is not being examined in this case nor does our margin analysis require that we compare CSWG's steel plate to the WTTC's steel plate. Rather, our purpose is to determine the appropriate value of the steel plate consumed in the production of the subject merchandise by CSWG. CSWG's customer did not specify an ASTM standard, nor did CSWG use an ASTM standard of steel plate as a substitute for the required European Standard steel plate. Therefore, we disagree with the WTTC that such a comparison of the European Standard to ASTM standards is necessary in this case.

The WTTC asserts that, because certain alloying elements are apparent on some of the MTCs submitted by CSWG, the company's steel plate consumption should be valued as alloyed steel plate. We find this argument unconvincing. Even if we were to compare the level of the alloying elements to the ASTM standards as suggested by the WTTC, the level of the alloying elements shown on the MTCs submitted by CSWG do not meet the alloy threshold requirements set forth by the WTTC's standards.<sup>37</sup>

We also find fault with the WTTC's argument that, because the CSWG's purchase prices of grades S355K2, S355J2, or S355NL steel plate and the Indian import values of these specific grades are higher than standard commodity grades of steel plate, CSWG's steel plate should be

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<sup>30</sup> See Verification Report, at 36.

<sup>31</sup> See *id.*

<sup>32</sup> See CSWG's July 5, 2012, submission at exhibit S7-33; Verification Report at VE 18.1.

<sup>33</sup> See Verification Report at 36.

<sup>34</sup> See the WTTC's case brief for the definition of HSLA steel as per the American Iron and Steel Institute.

<sup>35</sup> See Verification Report at 34 and VE 6.

<sup>36</sup> See the WTTC's June 15, 2012, submission at 5.

<sup>37</sup> See CSWG's rebuttal brief at 21-22 (regarding the level of the alloying elements in the WTTC's standards and CSWG's MTCs).

valued as alloyed steel plate.<sup>38</sup> The basis by which the grade of the steel plate used by CSWG is evaluated and certified is not the resulting price of the steel, but rather the chemical and technical requirements of the steel plate set forth in the European Standards requested by CSWG's customer(s). Moreover, the Indian import values for HTS 72085110 submitted by the WTTC explicitly describe the imports of grades S355 steel plate as "non alloy" steel plate.<sup>39</sup> We also note that, because the WTTC has shown that grades of S355 are included in the Indian import statistics for HTS 72085110, any price premium would necessarily be captured in the value of those imports.

Because the record evidence clearly identifies the steel plate used in the production of the subject merchandise as non-alloy steel plate, we have rejected the WTTC's suggestions to value steel plate as alloy plate or to use a value based on an average of non-alloy and alloy steel plate values. As such, we have continued to value CSWG's steel plate inputs as non-alloy steel plate.

Section 773(c)(1) of the Tariff Act of 1930, as amended, directs the Department to use "the best available information" from the appropriate market economy ("ME") country to value FOPs. The Department evaluates potential surrogate values based on a well established set of criteria which includes a strong preference for valuing all FOPs in the primary surrogate country,<sup>40</sup> as well as a preference for prices which are period-wide, representative of a broad market average,<sup>41</sup> specific to the input in question, net of taxes and import duties, contemporaneous with the period under consideration, and publicly available.<sup>42</sup> As there is no hierarchy for applying the above-mentioned criteria, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" available SV is for each input.<sup>43</sup>

The Indian import data from the GTA used by the Department in the *Preliminary Determination* is from the primary surrogate country,<sup>44</sup> based on POI prices covering all Indian imports under HTS 720851100,<sup>45</sup> from an HTS category that includes the product being valued,<sup>46</sup> net of taxes and duties, and publicly available. While the HTS category covers grades other than S355 steel plate, the Department has previously noted "{t}he fact that import statistics may contain imports of materials other than the material that is being valued does not necessarily render those

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<sup>38</sup> See the WTTC's September 28, 2012, submission at exhibit 5 and the WTTC's May 23, 2012, submission at exhibit 3 (declaration of Jeff Whiteman, Nucor Corporation, attesting that HSLA steel plate sells at prices higher than standard commodity steel plate).

<sup>39</sup> See the WTTC's September 28, 2012, submission at exhibit 5.

<sup>40</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 9.

<sup>41</sup> See, e.g., *Fish Fillets from Vietnam*, and accompanying IDM at Comment 3.

<sup>42</sup> See NME Surrogate Selection Policy Bulletin at 4.

<sup>43</sup> See, e.g., *Nails from the PRC*, and accompanying IDM at Comment 3; *Mushrooms from the PRC*, and accompanying IDM at Comment 1.

<sup>44</sup> See Surrogate Country Selection Memorandum.

<sup>45</sup> See Surrogate Value Memorandum at exhibit 2.

<sup>46</sup> See the WTTC's September 14, 2012, submission at exhibit 5.

statistics inappropriate surrogate values.”<sup>47</sup> The Department has found that GTA data meet these criteria and prefers to use these data when possible.<sup>48</sup>

CSWG contends that the record of this case contains evidence from 15 different data sources most of which value steel plate between \$0.68/kg to \$0.89/kg with the one outlier being the GTA average price of \$1.20/kg relied on by the Department in the *Preliminary Determination*.<sup>49</sup> The 15 data sources include the GTA India Imports used by the Department in the *Preliminary Determination* and the WTTC’s submission of Infodrive data in its September 14, 2012, submission at exhibit 5. We note that neither party has argued that the Department should rely on the Infodrive data for purposes of valuing steel plate.

CSWG alleges that the GTA India import statistics are aberrational based on the comparison of the AUV for the POI to certain prices obtained from Steel India, JPC, Steel Chamber Weekly, Steel Mint, MEPS (India, only), MEPS (other than India), Metal Expert India, Metal Expert (Russia and Ukraine), SBB, GTA Ukraine import statistics, Steel Orbis Ukraine Export, GTA India Export, and Steel Price Europe. CSWG asserts that the Steel India data represent the best available information, are corroborated by the similarity of prices in the JPC, Steel Chamber Weekly, Steel Mint, MEPS and Metal Expert publications as well as the GTA India Export data under HTS 72085110, and should be used for purposes of valuing the company’s steel plate inputs. We disagree with CSWG.

Specifically, we examined each of the 13 data sources submitted by CSWG to determine whether any of these sources substantiated CSWG’s argument that the GTA Indian import statistics are aberrational or if the alternate sources provide better information than the GTA data used by the Department in the *Preliminary Determination*. CSWG argues that the Steel India data submitted in its June 29, 2012, submission are the best available information of all data sources because the prices are differentiated by steel plate thicknesses, while the GTA data under HTS 72085110 represent steel plate measuring greater than 10 mm.<sup>50</sup> As noted by the WTTC, the Steel India data submitted by CSWG are based on different thicknesses of specific grades of steel other than grades of steel plate used by CSWG in the production of the subject merchandise (*i.e.*, grades S355K2, S355J2, or S355NL).<sup>51</sup> Because the record evidence shows that the Indian import statistics under HTS 72085110 include grades S355K2, S355J2, or S355NL<sup>52</sup> while the Steel India data do not,<sup>53</sup> we find the GTA data to be a more reasonable basis on which to value the grades S355K2, S355J2, or S355NL steel plate used in the production of the subject merchandise. Furthermore, because the Steel India data do not include the grades of steel plate used in the production of the subject merchandise, we find it unreasonable to use these prices as a benchmark to determine whether the GTA India import data are aberrational. CSWG asserts that the grades of steel plate included in the Steel India data are “comparable” to the grades of

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<sup>47</sup> See *Solar Cells from the PRC*, and accompanying IDM at Comment 9; *Tapered Roller Bearings from the PRC*, and accompanying IDM at Comment 6.

<sup>48</sup> See, e.g., *Pencils from the PRC*, and accompanying IDM at Comment 4; *Shrimp from the PRC (2011)*, and accompanying IDM at Comment 4.

<sup>49</sup> See CSWG’s case brief at exhibit 1 (summarizing the 15 data sources and prices).

<sup>50</sup> See CSWG’s June 29, 2012, submission at exhibit 3.

<sup>51</sup> See the WTTC’s case brief at 16.

<sup>52</sup> See the WTTC’s September 14, 2012, submission at exhibit 5.

<sup>53</sup> See CSWG’s June 29, 2012, submission at exhibit 3.

steel plate consumed in the production of the subject merchandise.<sup>54</sup> As discussed above, the grades of steel plate requested by CSWG's customer(s) and consumed in the production of utility scale wind towers are S355K2, S355J2, or S355NL. CSWG's customer(s) did not specify an ASTM standard, nor did CSWG use an ASTM standard of steel plate as a substitute for the required European Standard steel plate. Therefore, because the GTA India data specifically include S355K2, S355J2, or S355NL grades of steel plate, we find the GTA India data to be more product specific than the Steel India data, which do not include the grades of steel plate consumed in the production of the subject merchandise. The GTA data, under HTS category 72085110, are consistent with the reported consumption of steel plate because they encompass grade S355 steel plate with thicknesses exceeding 10 mm (*i.e.*, the thicknesses consumed by CSWG in the production of the subject merchandise).<sup>55</sup>

We also disagree with CSWG that the JPC data support the conclusion that the GTA Indian import data are aberrational. The JPC data submitted by CSWG are not representative of the entire POI. In its May 10, 2012, submission, CSWG failed to provide the JPC data for May 2011.<sup>56</sup> In its September 14, 2012, submission, CSWG provided its calculation of the JPC prices exclusive of excise duties and VAT for the POI and used what appear to be the April 2011 prices as the prices for May 2011.<sup>57</sup> The Infodrive data submitted by the WTTC show that prices for steel plate varied between the months of April, May, and June 2011.<sup>58</sup> Because the JPC data do not include the entire POI, we find it unreasonable to compare the JPC data to the GTA India Import data, which are based on transactions occurring during each month of the POI. Furthermore, we find the average JPC price calculated by CSWG to be unreliable because it is based on the double inclusion of the April 2011 prices.

We find that the data from Steel Chamber Weekly are not representative of a broad market average. The data is based on wholesale market prices for Mumbai only.<sup>59</sup> CSWG's submitted surrogate value data from Steel India and JPC show that prices for steel plate differ by region within India.<sup>60</sup> For example, the Steel India data show that the price for Grade IS2062 Grade B plate on April 1, 2011 in Mumbai was 36.27 Rupees ("Rs")/kg while the price in Chennai was 39.44 Rs/kg and the price in Ahmadabad was 40.35 Rs/kg.<sup>61</sup> Because the record evidence shows that prices vary among markets within India, we find it unreasonable to compare a price for Mumbai to the GTA India import statistics which represent a broad market price.<sup>62</sup>

We have not relied on the Steel Mint data because the prices are representative of a single day, September 7, 2011. The GTA India import values are reflective of the entire POI. The record

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<sup>54</sup> See CSWG's case brief at 12, n.6.

<sup>55</sup> See, *e.g.*, Verification Report at exhibit 18.1.

<sup>56</sup> See CSWG's May 10, 2012, submission at exhibit 3D.

<sup>57</sup> See CSWG's September 14, 2012, submission at exhibit 1C.

<sup>58</sup> See the WTTC's September 14, 2012, submission at exhibit 5.

<sup>59</sup> See CSWG's May 10, 2012, submission at exhibit 3C.

<sup>60</sup> See CSWG's June 29, 2012, submission at exhibit 3; CSWG's May 10, 2012, submission at exhibit 3D.

<sup>61</sup> See CSWG's June 29, 2012, submission at exhibit 3. As discussed above, these prices do not include the prices of the specific grade of steel plate consumed by CSWG in the production of the subject merchandise. We are using the prices here for purposes of showing how steel plate prices vary among markets within India.

<sup>62</sup> This is consistent with the Department's practice. See, *e.g.*, *Steel Hangers from the PRC*, and accompanying IDM at Comment 4. The CIT has affirmed this practice in *Wuhan Bee Healthy Co.*, 29 CIT at 1277-78.

evidence clearly shows that the prices for steel plate varied during the POI.<sup>63</sup> As such, we find it unreasonable to conclude that the prices for a six-month period are aberrational because the price for the six-month average is higher than the price for a single day.

We find the reliability of the MEPS India data submitted by CSWG to be questionable because the reported per-unit prices for the months of April, May, and June 2011 are the same. Other record evidence submitted by CSWG<sup>64</sup> and the Infodrive data submitted by the WTTC<sup>65</sup> show that prices for steel plate varied between the months of April, May, and June 2011. Because MEPS prices do not appear to represent the substantiated changes in market prices during that time period, we find the information is not representative of market prices in India. Furthermore, we find that the MEPS India data are not representative of a broad market average because the record evidence demonstrates that the prices are for Delhi only rather than all markets within India. As detailed in the discussion above regarding the data from Steel Chamber Weekly, the record evidence shows that steel plate prices vary among markets within India during the POI.<sup>66</sup>

CSWG asserts that the market prices obtained from MEPS for Asia, CIS, the EU, the Middle East, Russia, Turkey, UAE, and the Ukraine are appropriate benchmarks to show that the GTA India import value used by the Department in the *Preliminary Determination* is aberrational. We disagree. None of these countries or regions was identified in the Department's Surrogate Country Memorandum as economically comparable to Vietnam. Specifically, we found India to be economically comparable to Vietnam, while the economies of Asia, CIS, the EU, the Middle East, Russia, Turkey, UAE, and the Ukraine are not comparable to Vietnam. As such, consistent with the Department's practice,<sup>67</sup> we find that using the MEPS market prices as a benchmark for the GTA India prices is unreasonable because those economies are not economically comparable to Vietnam. Furthermore, a comparison of prices between these countries and regions and the prices reflected in the MEPS publications submitted by CSWG are for steel plate with thicknesses ranging from 15-40 mm.<sup>68</sup> As shown in exhibit 18.I of the Department's Verification Report, certain steel plate consumed by CSWG in the production of the subject merchandise does not fall within the MEPS thickness range. In contrast, the GTA India HTS subheading, 72085110, does encompass all of the steel plate thicknesses consumed by CSWG in the production of the subject merchandise. Therefore, we find it unreasonable to use the MEPS data as a benchmark for the GTA data because the MEPS data do not include prices for all necessary thicknesses of steel plate that are included in the GTA data and used in the production of the subject merchandise.

We have determined that the Metal Expert India data submitted by CSWG are not usable for comparison to the GTA Indian import data because the Metal Expert data do not permit the

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<sup>63</sup> See, e.g., the WTTC's September 14, 2012, submission at exhibit 5; CSWG's May 10, 2012, submission at exhibit 3D.

<sup>64</sup> See, e.g., CSWG's May 10, 2012, submission at exhibit 3D. As noted above, the JPC data does not include the month of May 2011. However, a comparison of the JPC prices for April 2011 and June 2011 show that the per-unit prices changed between the two months. See also the Steel India data submitted in exhibit 3 of CSWG's June 29, 2012, submission.

<sup>65</sup> See the WTTC's September 14, 2012, submission at exhibit 5.

<sup>66</sup> See, e.g., CS Wind's June 29, 2012, submission at exhibit 3 and May 10, 2012, submission at exhibit 3D.

<sup>67</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 9.

<sup>68</sup> See CSWG's May 10, 2012, submission at exhibit 3F.

Department to determine if the prices are representative of a broad market average.<sup>69</sup> The domestic price data show a monthly price range for “domestic producers,” but fail to identify where these producers are located or if the market quotations are from more than one Indian producer. As discussed above, the record evidence shows that prices differentiate by market.<sup>70</sup> The Metal Expert India data identify steel plate import prices based on imports into India from the PRC.<sup>71</sup> Because the Department considers the PRC to be a non-market economy (“NME”), we find it unreasonable to use the NME prices which may be affected by government influence to determine whether the GTA India import ME statistics are aberrational.<sup>72</sup>

We have determined that the Metal Expert data for countries other than India are not comparable to the GTA data because, as discussed above, Russia and Ukraine are not considered comparable economies to Vietnam. Moreover, as discussed above, the record evidence shows that prices differentiate by market.<sup>73</sup> The GTA Indian import data are reflective of the entire Indian market and, therefore, representative of a broad market average.

We disagree with CSWG that the SBB prices are comparable to the GTA India import statistics. The SBB data provide quarterly prices for East Asia steel import prices and Turkish domestic prices. The SBB data do not specify if the East Asia steel plate import prices include or exclude NME prices or prices from countries identified by the Department as providing generally available export subsidies.<sup>74</sup> In addition, Turkey has not been identified as a comparable economy to Vietnam. In regard to the Turkish domestic prices, the SBB data do not specify the market(s) within Turkey or the number of producers from which the SBB obtained the average prices. As such, we are unable to determine that the Turkish price is reflective of the broad market. As discussed above, the record evidence shows that prices differentiate by market.<sup>75</sup> More importantly, the SBB data do not show or state how the prices were determined. The SBB data also indicate that “prices may be nominal where insufficient transactions have occurred.”<sup>76</sup> However, the nominal prices are not specifically identified within the SBB data. For the foregoing reasons, we find that the SBB prices cannot be compared to the GTA India average import value because the prices may include imports from an NME and may include imports from countries identified by the Department as providing generally available export subsidies, because Turkey has not been identified as an economy comparable to Vietnam, and because the Turkish prices are not reflective of a broad market average.

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<sup>69</sup> See *id.* at exhibit 3B.

<sup>70</sup> See, e.g., CS Wind’s June 29, 2012, submission at exhibit 3 and May 10, 2012, submission at exhibit 3D, respectively.

<sup>71</sup> See CSWG’s May 10, 2010, submission at exhibit 3B.

<sup>72</sup> Consistent with the Department’s practice, which has been upheld in *AHSTA*, 791 F. Supp. 2d at 1336, we have excluded the imports from the PRC from our analysis.

<sup>73</sup> See, e.g., CSWG’s June 29, 2012, submission at exhibit 3 and May 10, 2012, submission at exhibit 3D.

<sup>74</sup> As discussed above, the Department has excluded the NME imports from our analysis. Consistent with the Department’s policy, see OTCA 1988 House Conference Report at 590, reprinted in 1988 U.S.C.C.A.N. 1547,1623-24, we have also excluded prices from countries identified by the Department as providing generally available export subsidies. See, e.g., *CTL Plate from Indonesia*, and accompanying IDM at Comment 3; *HR Flat Products from Thailand*, and accompanying IDM at Comment 23.

<sup>75</sup> See, e.g., CSWG’s June 29, 2012, submission at exhibit 3 and May 10, 2012, submission at exhibit 3D, respectively.

<sup>76</sup> See CSWG’s May 10, 2012, submission at exhibit 3E.

CSWG argues that the GTA Ukraine import statistics for the POI demonstrate that the GTA Indian import statistics are aberrational. Curiously, CSWG argued in its case brief that the Department should not consider the South African and Thai data originally submitted by the WTTC (and subsequently rejected by the Department) as the data are not relevant to the surrogate value analysis because the Department's practice is to rely solely on the list of potential surrogate countries to corroborate data.<sup>77</sup> Yet, CSWG argues that the Department should rely on Ukraine statistics for comparison to the GTA India data even though the Department's Surrogate Country Memorandum in this case does not include Ukraine as a surrogate country for Vietnam. CSWG provided no explanation as to why the Department should depart from this practice. Therefore, because the Department has identified India as economically comparable to Vietnam and India has reliable data to value steel plate and otherwise meets the criteria for serving as a surrogate country, there is no need to consider surrogate data from a country not identified as economically comparable, such as Ukraine.<sup>78</sup>

We have not relied on the Steel Orbis Ukraine Export data because Ukraine is not on the surrogate country list for this case.<sup>79</sup> Furthermore, the data state that the prices "may or may not include VAT,"<sup>80</sup> and we are not able to discern if the prices are for both HTS subheadings used for GTA Ukraine statistics (*i.e.*, 7208519800 and 7208512000).<sup>81</sup> Therefore, because Ukraine is not one of the countries identified on the surrogate country list as economically comparable to Vietnam, we find it unreasonable to compare the Steel Orbis data to the GTA India data.

We have not relied on the GTA India Export data submitted by CSWG.<sup>82</sup> As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.<sup>83</sup> In this regard, we have previously found that it is appropriate to disregard such prices from India because we have determined that India maintains broadly available, non-industry specific export subsidies.<sup>84</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in India at the time of the POI, we find that it is reasonable to infer that all exporters from India may have benefitted from these subsidies.<sup>85</sup> As such, we find it unreasonable to use the Indian export prices, which may be affected by subsidies, to determine whether the GTA India import ME statistics (*i.e.*, prices that do not include such subsidies) are aberrational.

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<sup>77</sup> See CSWG's case brief at 8, n.2 (citing *Nails from the PRC*, and accompanying IDM at Comment 9 and *Multilayered Wood Flooring from the PRC*, and accompanying IDM at Comment 14).

<sup>78</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 9.

<sup>79</sup> See, e.g., *Nails from the PRC*, and accompanying IDM at Comment 9; *Multilayered Wood Flooring from the PRC*, and accompanying IDM at Comment 14.

<sup>80</sup> See CSWG's September 14, 2012, submission at exhibit 1F.

<sup>81</sup> As shown in CSWG's May 10, 2012, submission at exhibit 3A., Ukraine imports statistics under HTS 7208519800 represent non-alloy steel plate in thicknesses of greater than 10mm but less than 15 mm, while HTS 7208512000 represent non-alloy steel plate in thicknesses of great than 15 mm.

<sup>82</sup> See CSWG's September 14, 2012, submission at exhibit 1K.

<sup>83</sup> See OTCA 1988 House Conference Report at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.

<sup>84</sup> See, e.g., *HR Flat Products from India*, and accompanying IDM.

<sup>85</sup> See, e.g., *Electrodes from the PRC*, 76 FR at 12334; *Violet Pigment from India*, and accompanying IDM at Comment 1.

We have not relied on the Steel Price Europe data submitted by CSWG for grade S355 non-alloy steel plate because the price data are for steel plate ranging in thicknesses of 5-20 mm, which do not include all of the thicknesses of steel plate consumed by CSWG in the production of the subject merchandise.<sup>86</sup> This thickness range is inconsistent with the thickness range reflected in the GTA India data used by the Department, which does include all of the thicknesses of steel plate consumed by CSWG in the production of the subject merchandise. Therefore, we find it unreasonable to use the Steel Price Europe data, which is limited in its range of thicknesses, as the basis for determining whether the GTA India data, which are based on a much more broad range of thicknesses (*i.e.*, exceeding 10 mm), are aberrational. We have also disregarded the Steel Price Europe prices of non-alloy steel plate with thicknesses ranging from 8-60 mm because these prices are reflective of non-alloy steel plate grades S275JR and S235JR only.<sup>87</sup> As such, we find a meaningful comparison cannot be made to the GTA data when the record evidence shows that grade S355 non-alloy steel plate is included in the GTA data<sup>88</sup> while these prices are exclusive of grade S355 non-alloy steel plate.<sup>89</sup>

We have not relied on the Steel Price Europe grade S355 steel plate Belgian prices provided in exhibit 1.J of CSWG's September 14, 2012, submission because it is unclear how the information was gathered or, more importantly, if the data reflect prices from more than one Belgian steel plate producer. Specifically, the document states the price data were "gathered from Belgium market" but does not address how that data were gathered or the source of the data.<sup>90</sup> Because we are unable to determine whether the prices are selective or reflective of a broad market average, we find it unreasonable to use these data for a meaningful comparison to the GTA India data, which are representative of a broad market average.

CSWG argues that the Department must rely on domestic prices for purposes of its margin analysis because the Department's preference is to use domestic data when it has a choice between domestic data and import statistics. Contrary to CSWG's assertion, it is not the Department's preference to use domestic data when the domestic data are unreliable and other better alternative information is available on the record. Unlike the situation in *Tianjin Magnesium* cited by CSWG,<sup>91</sup> the domestic data placed on the record of this case are unreliable for the reasons identified above. Thus, the Department must rely on the import statistics in this case because it is the best available information.

## **Comment 2: Surrogate Financial Statements**

In the *Preliminary Determination*, the Department valued selling, general, and administrative ("SG&A") expenses, overhead, and profit, using the audited financial statements for the fiscal year ("FY") ending September 30, 2011, from ISGEC Heavy Engineering Limited ("ISGEC"),

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<sup>86</sup> See CSWG's September 14, 2012, submission at exhibit 1I.

<sup>87</sup> See *id.*

<sup>88</sup> See the WTTC's September 14, 2012, submission at exhibit 5.

<sup>89</sup> CSWG's price data in exhibit 1K of its September 14, 2012, submission show that prices differ between grades S235 and S355 steel plate of the same thicknesses. Therefore, it is not reasonable to conclude that a meaningful comparison can be made by comparing S235 and S355 steel plate prices.

<sup>90</sup> See CSWG's September 14, 2012, submission at exhibit 1J.

<sup>91</sup> See *Tianjin Magnesium*, 722 F. Supp. 2d at 1333.

an Indian producer of merchandise preliminarily found to be comparable to the merchandise under consideration that earned a before tax profit during the POI.<sup>92</sup>

After the *Preliminary Determination*, parties placed financial statements on the record that the Department has considered below. The WTTC submitted financial statements for the following companies: Larsen & Toubro Limited (“L&T”) for the FY April 1, 2011 – March 31, 2012 and Elecon Engineering Company Limited (“Elecon”) for the FY April 1, 2011 – March 31, 2012. CSWG submitted the financial statements for the following companies: Ganges Internationale Private Limited (“Ganges”) for the FY April 1, 2010 – March 31, 2011 and Suzlon Structures Limited (“Suzlon”) for the FYs April 1, 2011 – March 31, 2012 and April 1, 2010 – March 31, 2011.<sup>93</sup> The parties made arguments on which financial statements should be selected for the calculation of the financial ratios in the final determination.

For the final determination, the Department has used Ganges’ April 1, 2010 – March 31, 2011 audited financial statements to calculate the surrogate financial ratios because Ganges is a producer of identical and comparable merchandise, the company’s publicly available financial statements are audited, complete, show a profit, and reflect no evidence of subsidies found by the Department to be countervailable.

#### **A. ISGEC, L&T, and Elecon**

##### *WTTC’s Arguments*

- The financial statements for ISGEC, L&T, and Elecon are the only financial statements on the record that meet the Department’s requirements to serve as the basis for surrogate financial ratios.
- Heavy steel fabricators like ISGEC, L&T, and Elecon engage in the same production processes, use the same equipment, and have the same facilities and machinery necessary to cut, weld, and otherwise process large steel plates into large-scale subject steel towers. As such, ISGEC, L&T, and Elecon constitute producers of comparable merchandise.
- ISGEC’s principle line of business is not traded goods.
- CSWG’s allegation that ISGEC’s “other expenses” represent a massive amount is a gross misstatement. The other expenses shown on ISGEC’s financial statement amount to 5 percent of total expenditures as calculated by the Department.
- Contrary to CSWG’s assertions, there is no record evidence that subsidies distort the financial experience of ISGEC, L&T, and Elecon such that the statements are not reflective of the relevant industry.
- Although ISGEC’s financial statements contain a line item for export incentives there is no evidence that this item reflects benefits availed from countervailable subsidies.
- Earning credit under the Duty Entitlement Passbook (“DEPB”) program is not proof that the credits were used or that any benefit was availed during the 2010-2011 FY such that ISGEC’s financial performance is somehow distorted.

<sup>92</sup> See Surrogate Value Memorandum at 8.

<sup>93</sup> CSWG also submitted Suzlon’s April 1, 2009 – March 31, 2010 financial statements in its September 14, 2012, submission. However, CSWG has not argued that these financial statements should be used as the basis for the surrogate ratios. See CSWG’s case brief.

- The line item appearing in an accompanying schedule of contingent liabilities to ISGEC's financial statement refers to bonds executed against Export Promotion Capital Goods ("EPCG") license.
- The evidence placed on the record by CSWG does not demonstrate that ISGEC used the Advanced License or Advanced Authorization license, fulfilled the terms of the license, accrued any benefit from the programs during FY 2010-2011, or distorted ISGEC's financial performance for FY 2010-2011. The Advance Authorization scheme, contrary to CSWG's allegations, has not been countervailed by the Department.
- Even if the Department were to conclude that there is some reason to suspect that the financial ratios for ISGEC and the other heavy steel fabricators on the record in this case may be distorted by countervailed subsidy benefits, these financial statements represent the best choice because the alternative financial statements for Ganges and Suzlon are unreliable, insufficient, and do not meet the Department's substantive criteria.
- In the *Preliminary Determination*, the Department excluded revenues from "erection, commissioning, and other receipts" from the ratio calculations while including the related costs as "traded/finished goods." These revenues and costs should be included in the calculation of ISGEC's SG&A expense ratio.
- For the final determination, the Department should capture some portion of ISGEC's labor costs in the SG&A expense ratio by treating all employee costs, other than "salaries, wages, and bonuses," as SG&A expenses.
- The Department erred in the *Preliminary Determination* by summing "total expenditures" rather than "total expenditures less revenues" in the calculation of the denominator of ISGEC's SG&A ratio. Because the denominator of the SG&A expense ratio was overstated, the resulting SG&A ratio was understated for the *Preliminary Determination*.
- The excise duties should be removed from all ratio calculations by capturing both items in the "Profit and Adjustments to Profit" column of the Department's financial ratios worksheet.

#### *CSWG's Arguments*

- The Department should reject ISGEC's financial statements because ISGEC's main line of business is trading goods, not manufacturing goods, as evidenced by the value of the traded goods in comparison to ISGEC's cost of production.
- ISGEC's limited production experiences are vastly different from CSWG. ISGEC's top three finished goods are pressure vessels, sugar machinery, and boilers. The physical characteristics of these goods are not similar to utility scale wind towers, the production processes used are not the same as utility scale wind towers (*e.g.*, processes that impart physical and chemical properties so that the processed goods can withstand high pressure and high temperatures), and the application of these goods in processing or machinery is to preserve, store or produce goods unlike utility scale wind towers which are ultimately used to produce energy.
- The markets in which ISGEC's finished goods are sold generally are matured global markets while the wind energy sector is still developing. As such, the expenses related to the administration and sales of the two types of goods would be vastly different.
- The financial statements of ISGEC are distorted because the record evidence shows that ISGEC availed itself of numerous benefits under countervailable subsidy schemes offered

by the Government of India including DEPB, EPCG, and Advance Licenses, all of which the Department has found to be countervailable in multiple cases.

- ISGEC has also been a prolific user of the Advance Authorization scheme which must be deemed as a countervailable subsidy scheme similar to the Advance License scheme.
- The record evidence supports the conclusion that ISGEC's "Other Expenses," which were included in the numerator of the overhead ratio calculated by the Department in the *Preliminary Determination*, relate primarily to jobwork charges.
- The value of finished goods reflected on ISGEC's financial statements includes excise duties. As such, the Department's inclusion of the total value of finished goods (*i.e.*, goods plus excise tax) in the denominators of the SG&A and profit ratios resulted in distorted SG&A and profit ratios.
- If the Department relies on ISGEC's financial statements for purposes of calculating the surrogate financial ratios, the Department should reject the WTTC's proposed adjustments to ISGEC's financial ratio calculations. The revenues from "erection, commissioning, and other receipts" are typically related to a business segment of the company and, as such, the Department properly excluded the revenues from the ratio calculations. Furthermore, record evidence shows that the jobwork charges reflected in ISGEC's financial statements relate to erection and commissioning. As such, the Department should include the jobwork expenses incurred under the sum total of material, labor and energy in the calculation of the denominator's of ISGEC's overhead, SG&A, and profit ratios.
- The WTTC's proposal that the Department classify ISGEC's "Contribution to Provident Fund & Other Funds" and "Workmen and Staff Welfare Expenses" under SG&A as well as a portion of the "Salaries, Wages & Bonuses" expenses is inconsistent with the Department's *Labor Methodologies*, pursuant to which the Department classifies "Contribution to Provident Fund & Other Funds" and "Workmen and Staff Welfare Expenses" as direct labor in order to avoid the double-counting of such indirect labor costs because these costs are already included in the International Labor Organization ("ILO") Chapter 6A labor cost data.
- The WTTC's claim that the Department improperly excluded ISGEC's excise duty from the ratio calculation contradicts the Department's practice of excluding all line items containing excise duties from the calculation of the surrogate financial ratios.
- Elecon does not manufacture utility scale wind towers. The WTTC has not established any relationship between the gears and various types of equipment produced by Elecon and the utility scale wind towers produced by CSWG.
- Elecon's and L&T's financial performances are distorted as a result of the companies availing themselves of numerous benefits under the Government of India's EPCG, Advanced License, and Advanced Authorization subsidy programs.
- Record evidence shows that L&T's overall production experiences are wide and varied covering numerous industry sectors.
- Contrary to the WTTC's claim, L&T's business is not focused on heavy steel fabrication.

**Department's Position:** The Department agrees with CSWG, in part. We have not relied on the ISGEC financial statements because those statements reflect evidence<sup>94</sup> of countervailable

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<sup>94</sup> See the WTTC's May 10, 2012, submission at exhibit 4B, schedule X, footnote 1.

subsidies and other more reliable and representative data are available on the record. We have not relied on the financial statements of L&T or Elecon because we find that they are not producers of identical or comparable merchandise and other reliable data are available on the record for a producer of identical merchandise (*i.e.*, Ganges).

Pursuant to section 773(c) of the Act, the Department values the FOPs using the “best available information” from an ME country. In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.<sup>95</sup> While the statute does not define “comparable merchandise,” in selecting surrogate financial statements, the Department has considered whether the products have similar production processes, end use, and physical characteristics.<sup>96</sup> Additionally, the Department’s practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies and there are other more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.<sup>97</sup>

In choosing surrogate financial ratios, it is the Department’s practice to use data from ME surrogate companies in the primary surrogate country based on the “specificity, contemporaneity, and quality of the data.”<sup>98</sup> The Department’s practice in selecting surrogate financial statements does not set forth a discrete hierarchy between contemporaneity and specificity as asserted by the WTTC and CSWG. In determining the suitability of surrogate values, the Department carefully considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each source on a case-by-case basis.<sup>99</sup> Accordingly, when examining the merits of financial statements on the record, the Department does not have an established hierarchy that automatically gives certain characteristics more weight than others. Rather, the Department must weigh available information with respect to each situation and make a product- and case-specific decision as to what constitutes the “best” available information. Furthermore, the court has recognized the Department’s discretion in selecting the best surrogate values on the record.<sup>100</sup>

In the *Preliminary Determination*, the Department relied on ISGEC’s financial statements for the purposes of calculating surrogate financial ratios.<sup>101</sup> Further review of these financial statements has convinced the Department that evidence of the company receiving countervailable subsidies exists within the financial statements. Footnote 1 of schedule X accompanying the financial statements lists, as a contingent liability, “bonds executed in favour of President of India against

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<sup>95</sup> See, e.g., *Shrimp from the PRC (2012)*, and accompanying IDM at Comment 12.

<sup>96</sup> See, e.g., *Chlorinated Isocyanurates from the PRC (2005)*, and accompanying IDM at Comment 3.

<sup>97</sup> See, e.g., *Multilayered Wood Flooring from the PRC*, and accompanying IDM at Comment 1.

<sup>98</sup> See, e.g., *Hand Trucks from the PRC*, and accompanying IDM at Comment 2; *Lined Paper Products from the PRC*, and accompanying IDM at Comment 1.

<sup>99</sup> See, e.g., *Mushrooms from the PRC*, and accompanying IDM at Comment 1; *Crawfish from the PRC*, and accompanying IDM at Comment 2.

<sup>100</sup> The CIT has held that, “when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly.” See *FMC Corp.*, 27 CIT at 251 (citing *Technoimportexport*, 16 CIT at 18).

<sup>101</sup> See Surrogate Value Memorandum at 8.

EPCG license.”<sup>102</sup> The EPCG scheme is a program the Department has previously found to be countervailable.<sup>103</sup> We disagree with the WTTC’s rationale that, because the EPCG reference is shown under the heading “contingent liability,” there is no corresponding cost. Indian generally accepted accounting principles (“GAAP”) require a contingent liability to be disclosed “unless the possibility of an outflow of resources embodying economic benefits is remote.”<sup>104</sup> Therefore, because evidence exists that ISGEC received countervailable subsidies and other, more reliable, data is on the record, we have not used the ISGEC financial statements for the final determination.<sup>105</sup>

We have not relied on L&T’s or Elecon’s financial statements because we find that L&T and Elecon are not producers of identical or comparable merchandise and reliable, complete financial statements of a producer of identical and comparable merchandise are available on the record of this case. L&T is involved in a number of wide-ranging business segments: infrastructure (*e.g.*, roads, metro rail and railways); heavy engineering (*e.g.*, custom designed, engineered equipment and systems to the fertilizer, refinery, petrochemical, chemical, oil and gas, thermal and nuclear power, and aerospace industries); hydrocarbon; thermal power; metallurgical and material handling; electrical & automation; machinery & industrial products (*e.g.*, machinery for construction and mining, paper and pulp, steel, rubber and plastic industries); information technology; integrated engineering; and financial services.<sup>106</sup> L&T’s financial statements yield no evidence of L&T being a producer of identical merchandise. We examined L&T’s financial statements and found no similarities between the end uses of the subject merchandise and merchandise produced by L&T.<sup>107</sup> The end use of a utility scale wind tower is to support wind turbine components.<sup>108</sup> L&T’s merchandise is further incorporated into other equipment (*e.g.*, switchgears and valves) or used for construction or agricultural purposes (*e.g.*, earthmoving and agricultural machinery), industrial or chemical processing (*e.g.*, rubber processing machinery and chemical processing equipment), industrial monitoring (*e.g.*, electronic monitoring systems), or nuclear energy generation.<sup>109</sup> The WTTC relies heavily on the assumption that, because L&T produces items with steel plate, the production processes and physical characteristics of L&T’s merchandise are similar to the subject merchandise. We disagree. The production processes used by CSWG involve the beveling, bending and welding of steel plates, the welding of flanges to steel plates, circular seam welding, shot-blasting, painting, production, assembling, and attaching of internal components, and packing.<sup>110</sup>

The merchandise produced by L&T necessitates a higher level of machining (*e.g.*, switchgears, valves, processing equipment), technical (*e.g.*, chemical processing and nuclear energy generation equipment), and electronic processing (*e.g.*, industrial electronic control panels) than the subject merchandise. Although the Department is not required to duplicate the exact

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<sup>102</sup> See the WTTC’s May 10, 2012, submission at exhibit 4B.

<sup>103</sup> See, *e.g.*, *PET Film from India*, and accompanying IDM at “Programs Determined to be Countervailable.”

<sup>104</sup> See Accounting Standard 29 (Issued 2003) at para. 27, available at [http://www.icaai.org/post.html?post\\_id=8660](http://www.icaai.org/post.html?post_id=8660)

<sup>105</sup> See OTCA 1988 House Conference Report at 590, reprinted in 1988 U.S.C.C.A.N. 1547,1623-24

<sup>106</sup> See the WTTC’s September 14, 2012, submission at exhibit 2A.

<sup>107</sup> The types of merchandise produced by L&T are specifically outlined by class of goods. See the WTTC’s September 14, 2102, submission at exhibit 2A, footnote Q(25).

<sup>108</sup> See, *e.g.*, Petition, Volume 1, at 15

<sup>109</sup> See the WTTC’s September 14, 2012, submission at exhibit 2A, footnote Q(25) for the complete list.

<sup>110</sup> See CSWG’s April 18, 2012, submission at 5-6.

production experience of CSWG,<sup>111</sup> we find it unreasonable to rely on L&T's production experience because it is significantly more diverse in comparison to CSWG's production processes used to manufacture the subject merchandise and more reasonable specific information is available on the record. Even if, *arguendo*, we were to find that L&T's steel fabrication products were comparable merchandise, we note that the steel structural fabrication revenues represent 0.002 percent of L&T's total revenues.<sup>112</sup> As such, we find it unreasonable to conclude that L&T's production experience is representative of a wind tower manufacturer when L&T's steel fabrication business constitutes such an insignificant portion of L&T's total operations.

According to the evidence placed on the record by the WTTC, Elecon "manufactures and sells wind mills up to 600kw."<sup>113</sup> However, the record evidence also shows that Elecon "is currently involved only in manufacture of the windmill gearbox and outsources the rest of the components required for a wind mill."<sup>114</sup> Because Elecon does not produce utility scale wind towers, we find that Elecon is not a producer of identical merchandise. In addition to windmill gear boxes, Elecon also manufactures industrial gears and gear boxes for the sugar, cement, steel, fertilizer, plastic, extrusion and rubber industries; bulk material handling equipment (*e.g.*, conveyors) and power transmission solutions for the power, mining, steel, plastic, sugar, defense and cement industries; and various products that are offered to various industries including power, chemicals, steel, plastic, elevators, palm oil, marine engineering, cement, sugar, mining, petroleum, coal handling and fertilizers.<sup>115</sup> We find that the end uses of these products are not similar to the end use of the subject utility scale wind towers. We also find that the merchandise produced by Elecon dictates a higher level of machining (*e.g.*, gears and gear boxes) and technical processing (*e.g.*, power transmission equipment) than the subject merchandise. As well, we find that the physical characteristics of gears, gear boxes, bulk material handling equipment, power transmission solutions and products for the various industries listed above to be dissimilar to utility scale wind towers (*i.e.*, steel plate welded together to make a tubular structure).<sup>116</sup> Therefore, we find it unreasonable to rely on Elecon's production experience as a surrogate for CSWG because it does not produce comparable merchandise.

## B. Ganges & Suzlon

### *WTTC's Comments*

- Ganges's and Suzlon's April 1, 2010 – March 31, 2011 financial statements<sup>117</sup> should not be relied on for the surrogate value ratios because they are not contemporaneous to the POI.
- Suzlon's April 1, 2011 – March 31, 2012 financial statements<sup>118</sup> should be excluded from the Department's analysis because the statements specifically demonstrate countervailable subsidies under the EPCG scheme.

<sup>111</sup> See *Nation Ford*, 166 F.3d at 1377.

<sup>112</sup> See the WTTC's September 14, 2012, submission at exhibit 2A, footnote Q(25) for steel plate fabrication revenues and schedule K for total revenues.

<sup>113</sup> See the WTTC's September 14, 2012, submission at exhibit 1A

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> See, *e.g.*, *Preliminary Determination*, 77 FR at 46059.

<sup>117</sup> See CSWG's September 14, 2012, submission at exhibits 2A and 2F.

- Ganges is a producer of lattice towers, which are neither identical nor comparable to subject towers.<sup>119</sup>
- CSWG and Ganges do not engage in the same production processes. As confirmed in the declaration of Mr. Dennis Janda,<sup>120</sup> the manufacturing of lattice towers requires different inputs and production equipment from the inputs and equipment used by CSWG to manufacture utility scale tubular wind towers. The end uses and physical characteristics of the small wind lattice towers differ from those of utility scale wind towers.
- The revenues reflected on Suzlon's April 1, 2011 – March 31, 2012 financial statements are not based on market prices but rather reflect transfer prices between Suzlon and its holding company, Suzlon Engineering Limited (“SEL”).<sup>121</sup> Moreover, the record evidence shows that SEL incurred losses in FY 2011 and FY 2012.
- Correction of the numerous discrepancies in CSWG's calculation of Suzlon's 2011-2012 surrogate ratios shows that Suzlon did not earn a profit.<sup>122</sup>

### *CSWG's Arguments*

- The Department cannot select a financial statement merely because it is contemporaneous without evaluating other critical factors.
- Product specificity trumps contemporaneity in the Department's analysis of surrogate financial statements where the non-contemporaneous statements are adjacent to the POI and evidence is presented that the ratios did not change over time and encompass subject merchandise (*i.e.*, wind towers, both lattice and tubular) or the most comparable merchandise while the contemporaneous statements encompass merchandise that is less comparable in physical characteristics, production process, and end use.
- If two or more financial statements are equally comparable in terms of their production experiences, the Department also factors in its decision any evidence of actionable subsidies availed by the surrogate company.
- Ganges' April 1, 2010 – March 31, 2011 and Suzlon's April 1, 2011 – March 31, 2012 financial statements offer the Department the best option to value the financial ratios with the greatest degree of certainty and accuracy. If the Department rejects Suzlon's April 1, 2011 – March 31, 2012 financial statements, the Department should then rely on Suzlon's April 1, 2010 - March 31, 2011 financial statements.
- Both Suzlon and Ganges are producers of the subject merchandise. Ganges produces tubular wind towers, not just lattice towers, as alleged by the WTTC.<sup>123</sup>
- The surrogate value information submitted by CSWG shows that both Granges and Suzlon produced the same size wind towers as CSWG.<sup>124</sup>
- The towers produced and sold by CSWG, Granges, and Suzlon are, by the WTTC's own admission, identical wind towers.

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<sup>118</sup> See CSWG's September 14, 2012, submission at exhibit 2D.

<sup>119</sup> The WTTC refers to CSWG's September 14, 2012, submission at exhibit 2B.

<sup>120</sup> See the WTTC's September 24, 2012, submission at exhibit 8.

<sup>121</sup> The WTTC refers to CSWG's September 14, 2012, submission at exhibit 2D.

<sup>122</sup> See CSWG's September 14, 2012, submission at exhibit 2E.

<sup>123</sup> See CSWG's September 14, 2012, submission at exhibit 2B.

<sup>124</sup> CSWG refers to its September 14, 2012, submission at exhibits 2B and 2H, respectively.

- Moreover, the WTTC incorrectly deduces that the WTTC’s wind tower expert’s declaration regarding the difference in production processes between tubular wind towers and lattice wind towers is substantive evidence that Ganges produces only lattice wind towers.
- Even assuming that Ganges produced only lattice wind towers, the lattice towers are comparable to the subject merchandise in that both products are towers with certain mechanical stress characteristics (*i.e.*, physical characteristic) and both are ultimately used as a base for carrying other wind mill components.
- Because Ganges’ production and sales consists primarily of wind towers and other steel structures and Suzlon primarily produces wind towers, the financial statements of these companies are not corrupted by large-scale production and sales of merchandise which is not comparable to the subject merchandise.
- There is no record evidence that Ganges’ financial statements are tainted by countervailable subsidies. The Department’s practice does not attribute the “export incentives” line item reflected in Ganges’ financial statements as imparting any distorting influence on the financial performance of the company.<sup>125</sup>
- Contemporaneity is not such a significant factor in evaluating a financial statement when the production experience of the surrogate company is otherwise specific to the producer-respondent.
- A comparison of the financial statements of Suzlon for the period prior to the POI and for the period which includes the POI shows that the overhead, SG&A, and profit ratios decreased, but that the decrease was not significant.
- Suzlon’s April 1, 2011 – March 31, 2012 financial statements are at worst distorted by a *de minimis* amount of government subsidies earned under the EPCG scheme, less than 0.01 percent of its overall sales of manufactured goods.<sup>126</sup> The insignificance of these subsidies does not render the Suzlon’s financial statements *unreliable*.
- Sales made to a related company do not lead to any inference that the sales prices are distorted.
- Alternatively, the Department may rely on Suzlon’s April 1, 2010 – March 31, 2011 financial statements.
- The Department should classify Suzlon’s jobwork expenses when relying on Suzlon’s financial statements as labor costs rather than overhead expenses when calculating the surrogate financial ratios.
- The “Kutch Package Yojana” program receivables reflected on Suzlon’s financial statements have never been held to be countervailable by the Department.<sup>127</sup> Moreover, the Department specifically found a similar program, “Kutch Incentive Scheme,” not to be countervailable.
- Suzlon’s April 1, 2011 – March 31, 2012 financial statements showed that the company experienced a tax holiday.<sup>128</sup> However, under the Department’s precedent, such tax benefits without further tying them to a specific program or provision that has been proven to be countervailable must be held to be benign.

<sup>125</sup> CSWG refers to its September 14, 2012, submission at exhibit 2A.

<sup>126</sup> See CSWG’s case brief at 56-57.

<sup>127</sup> CSWG refers to its September 14, 2012, submission at exhibit 2D.

<sup>128</sup> CSWG refers to its September 14, 2012, submission at exhibit 2D.

**Department's Position:** We agree with CSWG that Ganges' April 1, 2010 – March 31, 2011 financial statements are the best available information on the record because Ganges is a producer of identical and comparable merchandise and the company's financial statements are audited, complete, publicly available, show a profit, and reflect no evidence of subsidies found by the Department to be countervailable.

We have not relied on Suzlon's April 1, 2011 – March 31, 2012 or April 1, 2010 – March 31, 2012 financial statements because those financial statements exhibit evidence of countervailable subsidies. Footnote 13 accompanying Suzlon's April 1, 2011 – March 31, 2012 financial statements<sup>129</sup> and footnote 2(i) accompanying Suzlon's April 1, 2010 – March 31, 2011 financial statements<sup>130</sup> identify accounts receivables related to the "Export Promotion Capital Goods" scheme, a program the Department has previously found to be countervailable.<sup>131</sup> Therefore, because we find that Suzlon's statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that do not contain evidence of subsidization, we have not relied on the Suzlon financial statements for purposes of calculating the surrogate financial ratios. CSWG argues that, because the subsidies received by Suzlon during the April 1, 2011 – March 31, 2012 financial year were insignificant in value, the Department should rely on Suzlon's April 1, 2011 – March 31, 2012 financial statements. The Department's practice is not to evaluate the significance or impact of the subsidies received by Suzlon as suggested by CSWG. Instead, the Department determines whether or not evidence of subsidies exists and whether more reliable alternative financial statements are available.<sup>132</sup> The Department only relies on financial statements where evidence of subsidies exists in those instances where no alternative financial statements are available.<sup>133</sup> In this case, the record evidence shows that Suzlon received subsidies and alternative financial statements (*i.e.*, Ganges' April 1, 2010 – March 31, 2011 financial statements) are available on the record.

Information from Ganges' website, placed on the record by CSWG, shows that Ganges is a producer of wind towers in both tubular and angular (lattice) form.<sup>134</sup> We find the tubular wind towers produced by Ganges to be identical to the wind towers subject to this proceeding.<sup>135</sup> The wind towers produced by Ganges are tubular<sup>136</sup> structures made of steel<sup>137</sup> used for purposes of supporting wind turbines (*i.e.*, nacelle and rotor blades).<sup>138</sup> Therefore, we find Ganges to be a producer of identical merchandise.

We also disagree with the WTTC that the lattice wind towers produced by Ganges cannot be considered comparable merchandise. The purpose of a lattice wind tower, similar to the subject wind towers, is to support a wind turbine. The physical characteristics of a lattice wind tower are

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<sup>129</sup> See CSWG's September 14, 2012, submission at exhibit 2D.

<sup>130</sup> See CSWG's September 14, 2012, submission at exhibit 2F.

<sup>131</sup> See, e.g., *PET Film from India*, and accompanying IDM at "Programs Determined to be Countervailable."

<sup>132</sup> See, e.g., *Multilayered Wood Flooring from the PRC*, and accompanying IDM at Comment 1.

<sup>133</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 2.

<sup>134</sup> See CSWG's September 14, 2012, submission at exhibit 2B.

<sup>135</sup> See e.g., *Preliminary Determination*, 77 FR at 46059.

<sup>136</sup> See CSWG's September 14, 2012, submission at exhibit 2B.

<sup>137</sup> *Id.* at exhibit 2A, schedule 14.

<sup>138</sup> *Id.* at exhibit 2B.

not identical to tubular wind towers in that the lattice tower is made of steel angles rather than whole plates of steel like the subject wind towers and lattice wind towers are typically shorter than tubular wind towers.<sup>139</sup> However, the lattice and tubular wind towers are similar in that both are vertical steel structures.<sup>140</sup> The production processes used in the production of lattice wind towers are not identical to those used in the manufacture of the tubular wind tower in that the lattice wind towers require the cutting, bending, welding, and assembly of smaller steel angles, while the tubular wind towers require the cutting, bending, welding, and assembly of heavier steel plate.<sup>141</sup> While the processes may differ in relation to the steel being used to manufacture the wind tower, the same types of processes are used in the manufacture of both types of wind towers (*e.g.*, cutting, bending, welding, and assembly). The WTTC relies heavily on the types of welding machinery used by Ganges to show that the production processes used in the manufacture of lattice wind towers are significantly different from those used in the manufacture of the subject merchandise.<sup>142</sup> We find this argument unpersuasive. Due to the proprietary nature of this discussion, the Department's full reasoning is presented in the Final Analysis Memorandum.<sup>143</sup>

Because we find the end use and physical characteristics of lattice wind towers to be similar to the subject merchandise and because the production processes used by Ganges to manufacture lattice wind towers are similar to those employed by CSWG in the manufacture of the subject wind towers, we find that Ganges also is a producer of comparable merchandise.

The parties to this case argue that the financial statements used to calculate the surrogate ratios should be selected based on a hierarchy of first contemporaneity, then specificity (the WTTC), or first specificity, then contemporaneity (CSWG). We emphasize that the Department's practice does not set forth a hierarchy between specificity and contemporaneity. Instead, the Department looks at the facts on the record on a case-by-case basis to determine which financial statements constitute the best available information. In this case, we have financial statements of a producer of identical and comparable merchandise (Ganges) that are not contemporaneous to the POI. We also have contemporaneous financial statements of L&T and Elecon that are not specific to CSWG's own production experience (*i.e.*, L&T and Elecon are not producers of identical or comparable merchandise). In this case, we find that the differences between L&T's and Elecon's production experiences and those of CSWG are significant enough to render L&T's and Elecon's contemporaneous financial statements to be inappropriate surrogates for CSWG. Accordingly, we have relied on the financial statements of Ganges.

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<sup>139</sup> See the declaration of Dennis Janda provided in the WTTC's September 28, 2012, submission at exhibit 8.

<sup>140</sup> See CSWG's September 14, 2012, submission at exhibit 2B.

<sup>141</sup> See the declaration of Dennis Janda provided in the WTTC's September 28, 2012, submission at exhibit 8.

<sup>142</sup> See CSWG's September 14, 2012, submission at exhibit 2B.

<sup>143</sup> See Final Analysis Memorandum.

### Comment 3: Financial Ratio Adjustments

#### *WTTC's Arguments*

- CSWG's calculations contain numerous discrepancies that significantly distort the surrogate ratios it submitted for Ganges.<sup>144</sup>
- CSWG improperly included the jobwork charges related to subcontracting costs in the labor column of its ratio calculations rather than the overhead and SG&A categories.
- Excise duties on sales and finished goods should be excluded from the ratio calculations.
- "Contribution to Provident and Other Funds" and "Staff Welfare Expenses" were improperly treated as in labor expenses rather than SG&A.
- The managerial remuneration costs should have been treated as SG&A expenses rather than labor costs.
- CSWG improperly assigned income from non-current bank deposits and dividends to SG&A when they should have been excluded from the ratio calculations.
- Donations that were excluded from the ratio calculation should have been included in SG&A expenses.
- In accordance with the Department's practice, profit should have been adjusted for such items as investment income, expenses, and interest income related to non-current assets.

#### *CSWG*

- The Department should classify Granges' jobwork expenses as labor costs, rather than overhead expenses, when calculating the surrogate financial ratios.

**Department's Position:** We agree with the WTTC and have classified Ganges' jobwork expenses as overhead expenses.<sup>145</sup> Ganges' financial statements provide clear and separate line items for labor and energy consumption.<sup>146</sup> At the same time, they provide no detailed information with respect to the "jobwork charges" other than the reference (including erection and civil expense).<sup>147</sup> Jobwork charges are third party expenses and it has been the Department's practice to treat outside services as manufacturing overhead if energy and labor costs are identified separately in financial statements.<sup>148</sup> This is because, in deriving appropriate surrogate values for overhead, SG&A expenses, and profit, the Department typically examines the financial statements on the record of the proceeding and distinguishes expenses as they relate to each category, and excludes certain expenses (*e.g.*, certain movement expenses and excise duty) consistent with the Department's practice of accounting for these expenses elsewhere.<sup>149</sup> Consequently, because Ganges' financial statements already account for direct labor and energy as separate line items, we have determined that CSWG's proposed treatment of third party services as labor would result in double counting in this proceeding.<sup>150</sup>

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<sup>144</sup> The WTTC refers to CSWG's September 14, 2012, submission at exhibit 2C.

<sup>145</sup> See Final Surrogate Value Memorandum at exhibit 6.

<sup>146</sup> See CSWG's September 14, 2012, submission at 2A, schedules 18 and 19.

<sup>147</sup> See CSWG's September 14, 2012, submission at 2A, schedule 19.

<sup>148</sup> See *Folding Tables and Chairs from the PRC* and accompanying IDM at Comment 3C.

<sup>149</sup> See *Wooden Bedroom Furniture from the PRC*, and accompanying IDM at Comment 16.

<sup>150</sup> See *id.*

We also agree with the WTTC in regard to excise duties and have excluded these amounts from the ratio calculations.<sup>151</sup> We agree with the WTTC that the value of the interest income shown in Ganges' income statement is shown on Ganges' cash flow statement as "interest & dividend" income. Therefore, for purposes of calculating the surrogate SG&A, financial expense, and profit ratios, we have excluded interest income from the calculations because the income was generated from investments.<sup>152</sup> We agree with the WTTC that donations are general expenses of a company and, as such, have included Ganges' donations in the numerator of the SG&A surrogate ratio.<sup>153</sup> We also agree with the WTTC in regard to the calculation of profit and have removed all investment income and expense items from the profit calculation.<sup>154</sup>

We disagree with the WTTC that "Contribution to Provident and Other Funds," "Staff Welfare Expenses," and "Managerial Remuneration" should not be treated as labor expenses. In *Labor Methodologies*, the Department explained that the preferred methodology to value labor is to use industry-specific labor rates from the primary surrogate country.<sup>155</sup> Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A from the ILO Yearbook based on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs.<sup>156</sup> Specifically, in *Labor Methodologies Request for Comments*, the Department noted that ILO defines Chapter 6A labor data to include "remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labor cost."<sup>157</sup> Therefore, because we are using the Chapter 6A labor data, which includes such expenses as contributions to provident and other funds and staff welfare expenses to value CSWG's labor expenses, we have determined that WTTC's proposed treatment of these expenses as SG&A expenses would result in double counting in this proceeding.

We agree with the WTTC in regard to managerial remuneration and have classified those expenses as SG&A expenses. Schedule 21, accompanying Ganges' financial statements, shows that these expenses are remuneration of company directors.<sup>158</sup> As such, these expenses are not related to production but rather the general operations of the company as a whole. Consistent with the Department's practice,<sup>159</sup> we have excluded these expenses from Ganges' total labor expenses and added them to SG&A expenses.<sup>160</sup>

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<sup>151</sup> See Final Surrogate Value Memorandum at exhibit 6.

<sup>152</sup> *Id.* at exhibit 6.

<sup>153</sup> *Id.* at exhibit 6.

<sup>154</sup> *Id.* at exhibit 6.

<sup>155</sup> See *Labor Methodologies*, 76 FR at 36093; see also *Preliminary Determination*, 77 FR at 46065-66.

<sup>156</sup> See *Labor Methodologies*, 76 FR at 36093-94; see also *Preliminary Determination*, 77 FR at 46065-66.

<sup>157</sup> See *Labor Methodologies Request for Comments*, 76 FR at 9545.

<sup>158</sup> See CSWG's September 14, 2012, submission at exhibit 2A, schedule 21, note 4

<sup>159</sup> See, e.g., *CVP 23 from the PRC*, and accompanying IDM at Comment 1.

<sup>160</sup> See Final Surrogate Value Memorandum at exhibit 6.

#### **Comment 4: Packed Weight and the Sum of FOPs**

##### *WTTC's Arguments*

- CSWG's packed weight and the sum of its reported FOPs do not reconcile. Even after disallowing CSWG's scrap offsets or accounting for CSWG's internal weight explanations, a discrepancy still exists between the sum of the FOPs and the packed weight.
- The Department should not assume that, by denying CSWG's reported scrap offset as it did in the *Preliminary Determination*, it is accounting for a portion of the difference between the packed weight of the subject merchandise and the sum of CSWG's reported FOPs.
- CSWG has failed to act to the best of its ability to account for the difference between the packed weight and the sum of the reported FOPs despite numerous opportunities to do so. The record indicates that this discrepancy is likely the result of CSWG's failure to report FOPs for all of its inputs and misclassification of FOPs as overhead. A comparison of the reported inputs and the BOM in CSWG's global supply agreement shows several tower parts for which CSWG did not report FOPs. Accordingly, application of adverse facts available ("AFA") is warranted.
- As AFA, the Department should assume that the largest difference between the packed weight of the subject merchandise and the sum of the FOPs cited in the Department's Verification Report is an additional FOP and assign it the highest surrogate value on the record for any given tower component (*i.e.*, USD 20.55/kg).

##### *CSWG's Arguments*

- The WTTC errs in its allegations that a discrepancy still exists between the reported packed weight and the sum of the FOPs because the two weight totals do not reconcile, that the FOP weights are underreported, and that AFA should be applied.
- The reported packed weight is based on a theoretical calculation accomplished by CSWG's customer(s) to determine the "center of gravity" ("COG") of each section for purposes of placing the sections on the shipping vessel for correct balance and to avoid any rolling in transit. As such, the packed weights of the sections are not actual gross weight calculations based on the gross weight of all material inputs prior to production/processing, to which an actual post production net weight calculation can be compared and an actual scrap yield determined.
- The weight of the internal components in the packed weight calculation accomplished by CSWG's customer(s) is a derived or estimated figure and bears no relationship to the actual weights of the internal/ancillary components. As such, the weight of the internals completely skews the resulting comparison to reported FOPs.
- Because CSWG's customer(s) does not have information regarding the weights of the internal/ancillary components, the packed weight for internals cannot be verified by any actual weights. The inaccuracy of the packed weight of the internal/ancillary components calculated by CSWG's customer(s) is apparent in that the packed weight is two times higher than the total of all internal/ancillary components in the FOP calculations.

- In order to create an apples-to-apples comparison, the derived internal weights must be removed from the customer's calculation of packed weights and replaced by the total actual weights of all internal and ancillary components before comparing to the total FOP weights. When this fundamental adjustment is made, the scrap sales ratio can be tied to the actual production of scrap via production yields during the POI, thereby satisfying the Department's requirement that scrap sales be tied to scrap generated during production. Moreover the differential between the packed weight and the net weights is *de minimis* which thereby confirms the accuracy of the FOP weights.
- The Department verified the weights included in the packed weight calculation for steel door frames and flanges. The Department could not confirm the reported weights of internals/ancillary components included in the calculated packing weight because the packed weight of the internal/ancillary components is a derived or estimated figure.<sup>161</sup> However, the Department was able to confirm the reported FOP weights of internal and ancillary components. As such, there are no discrepancies in the FOP weights of the components as alleged by the WTTC.
- The WTTC's calculation of the difference between the weights is the total scrap weight, not the actual difference between the packed and FOP weights.
- The WTTC's allegation that there are missing FOPs is dispelled by the correct comparison between packed weights and net weights. Moreover, the correct weight comparison shows that the actual FOPs weights were over reported when considering the steel yield loss ratios.
- The Department verified that CSWG did not misreport any FOPs by including such FOPs in factory consumables.
- The error in the customer(s)' calculation of total packed weight, corrected by CSWG at verification, was verified by the Department as an input error. Even with this correction, the differential between the total weights is *de minimis*.

**Department's Position:** We agree with the WTTC, in part, and have adjusted the total weight of the FOPs to equal the total packed weight of the finished product reported by CSWG in its section C submission.<sup>162</sup> As facts available, we have applied the weighted-average surrogate value of all internal components<sup>163</sup> to the difference between the total FOP weight and the total packed weight and included the resulting surrogate value in the calculation of NV. Because this adjustment concerns the free-of-charge components supplied by CSWG's customer(s), we have also revised the free-of-charge adjustment to the U.S. sales price. *See* Comment 13, below.

We agree with the WTTC that the weight discrepancy and CSWG's reported scrap offsets are two separate and distinct issues and, as such, we have addressed these issues separately in this memorandum and in our margin analysis. *See* Comment 5, below, for further discussion of CSWG's reported scrap offsets.

<sup>161</sup> CSWG identifies the internals/ancillary components as internal components, paint, thinner, zinc, wire, welding materials, bolts, nuts, washers, steel grit and tarpaulins. *See* CSWG's case brief at 81.

<sup>162</sup> Certain FOPs were revised for minor corrections at verification. *See* Verification Report at 3-4. We have relied on the revised FOPs for purposes of our comparison and the final determination.

<sup>163</sup> Internal components include those components produced or purchased by CS Wind Group and the free-of-charge components supplied by CS Wind Group's customer(s). *See, e.g.,* Verification Report at 37.

In the *Preliminary Determination*,<sup>164</sup> we compared CSWG's total reported net FOP weight (*i.e.*, the net sum of the input weights of steel plate, flanges, door frame, internal components, painting materials, welding materials, and steel and aluminum scrap offsets)<sup>165</sup> to the total packed weight of the finished product (exclusive of lifting and transport equipment).<sup>166</sup> From this comparison, we noted that the total reported FOP net weight was less than the total weight reported for the finished product. As stated in the Surrogate Value Memorandum,<sup>167</sup> we denied CSWG's reported steel and aluminum scrap offsets in the *Preliminary Determination* to account for the discrepancy between the weights.<sup>168</sup>

Prior to the *Preliminary Determination*, the Department requested that CSWG submit a reconciliation of the sum of the reported weights of CSWG's FOPs to the total weight of the wind towers sold during the POI.<sup>169</sup> CSWG provided a reconciliation of its reported FOP weights and the reported weight of the finished product<sup>170</sup> and explained that, "since there are no weights for internals provided by the customer, the packing weights of internals were calculated as follows: weights are determined in the preparation of a 'lifting plan' and are based on 'reaction weight' (theoretical stress load weight)."<sup>171</sup> After analyzing CSWG's response, the Department asked CSWG to provide a reconciliation of the sum of all the material FOP weights reported in CSWG's June 1, 2012, submission and the packed gross weight of the reported U.S. sales using a specific template outlined by the Department.<sup>172</sup> In addition, the Department requested that CSWG explain all reconciling differences.

CSWG responded by stating that it had already provided the requested reconciliation of FOP weights to packed weights in its June 1, 2012 response.<sup>173</sup> CSWG reiterated that the total packed weight reported in the Section C database<sup>174</sup> and quantity and value ("Q&V") worksheet<sup>175</sup> was taken from packing lists<sup>176</sup> and is based on an estimated weight of all inputs, including an estimated single weight amount for all internals, as well as packing and transportation materials.<sup>177</sup> CSWG explained that the packing weight differs from the total reported FOP weight because the FOP weights are based on actual input weights and exclude packing and transportation material weights.<sup>178</sup> CSWG provided additional documentation which it stated

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<sup>164</sup> See Surrogate Value Memorandum at 6 and Preliminary Analysis Memorandum at attachment V.

<sup>165</sup> See CSWG's June 1, 2012, submission at exhibit S2-43 and CS Wind Group's section C data file "CSWDINFOP02."

<sup>166</sup> See CSWG's June 1, 2012, submission and at exhibit S2-43 and CS Wind Group's section C data file "CSWindsales02."

<sup>167</sup> See Surrogate Value Memorandum at 6.

<sup>168</sup> See, e.g., *Malleable Pipe Fittings from the PRC*, and accompanying IDM at Comment 1 (demonstrating the Department's practice of ensuring that reported input weights equal or exceed output weights).

<sup>169</sup> See the Department's May 9, 2012 supplemental questionnaire at question 55.

<sup>170</sup> See CSWG's June 1, 2012, submission at exhibit S2-43.

<sup>171</sup> See *id.*, at 53.

<sup>172</sup> See the Department's July 10, 2012 supplemental questionnaire at question 3.

<sup>173</sup> See CSWG's July 18, 2012, submission at 2-3 (referring to exhibit S2-43 of its June 1, 2012, submission).

<sup>174</sup> See CSWG's April 9, 2012 section C response at exhibit C1.

<sup>175</sup> See *id.*, at exhibit C4.

<sup>176</sup> As shown in exhibit A-2 of CS Wind Group's March 20, 2012, section A submission, packing lists are for tower sections. CSWG summed the packing list weight of all sections of the subject merchandise to determine the total packed weight of the subject wind tower. See CSWG's July 18, 2012, submission at exhibit S9-3.

<sup>177</sup> See CSWG's July 18, 2012, submission at 3.

<sup>178</sup> See *id.*

would assist the Department in understanding the reconciliation. According to CSWG, the additional documentation shows that the packed weight is calculated pursuant to estimations of weights, based on the drawings for each tower, including the weight of lifting and transportation equipment used for shipment purposes. CSWG explained that the packed weights, as shown in the drawings,<sup>179</sup> are based on completed tower sections and cannot be broken down by component. CSWG concluded that, because the packed weights are estimates and are not based on individual components, they are necessarily less accurate than the actual weights, by component, used for the FOP weight calculations.

At verification and subsequent to the *Preliminary Determination*, the Department examined and tested CSWG's reported packing weight,<sup>180</sup> reported FOP weights,<sup>181</sup> and the reconciliation of those weights submitted by CSWG.<sup>182</sup> From our discussion with CSWG officials, we confirmed that the calculation of the reported packing weight of the subject merchandise is performed in the normal course of business for purposes of preparing packing lists for shipment.<sup>183</sup> The total packing weight of a section is calculated based on the COG calculations provided by CSWG's customer(s) for purposes of positioning the wind tower section on the shipping vessel. As stated by CSWG in its rebuttal brief,<sup>184</sup> the COG is determined so that the sections are placed optimally on the shipping vessel to maintain correct balance and to avoid any rolling in transit. The total weight of each section reflected in the COG documents is the sum of the COG weights for all sections of the wind tower plus the weight of the transportation and the lifting equipment.<sup>185</sup>

The issue in contention here is whether the Department should rely on the total weight of the finished product reported by CSWG in its section C sales submission (*i.e.*, the packed weight reflected on the company's packing lists). CSWG argues that the total weight of the finished product is based on estimated weights of the internal/ancillary components and therefore cannot be used for purposes of determining whether CSWG's raw material input quantities equal the total output quantity of the finished product. We disagree. The packed weight reflected in the section C sales submission is the weight CSWG cites in its packing lists and is used for purposes of positioning the wind tower section on the shipping vessel.<sup>186</sup> As such, we find it unreasonable to assume that the weight of the wind tower section recorded in the packing lists is so grossly overestimated as to chance the misplacement of the wind tower section on a shipping vessel and risk an imbalance of the vessel or rolling of the tower section in transit.<sup>187</sup>

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<sup>179</sup> See *id.*, at exhibit 9-3.

<sup>180</sup> As described on page 24 of the Verification Report, the packed weight reported in the section C data file was understated. See Verification Report at exhibit 5.

<sup>181</sup> See, *e.g.*, Verification Report at 36 for steel plate.

<sup>182</sup> See Verification Report at 47 (reconciling packed weight to sum of FOP weights). As noted by CSWG in its case brief at 9, n.3, the sum of the FOP weights shown in the Verification Report is overstated. We have corrected the calculation and have used the revised sum in our analysis for the final determination. See Final Analysis Memorandum at Attachment IV.

<sup>183</sup> See Verification Report at 47.

<sup>184</sup> See CSWG's rebuttal brief at 7.

<sup>185</sup> See, *e.g.*, Verification Report at exhibit 6.

<sup>186</sup> See Verification Report at 47 and exhibit 6.

<sup>187</sup> See Final Analysis Memorandum at Attachment IV (illustrating the difference between the FOP and COG internal weights); see also CSWG's rebuttal brief at 7.

Furthermore, there is no other record evidence available for the Department to either compare to the reported packed weight to determine the reasonableness of the packed weight or to rely on for purposes of comparing to the sum of the FOP weights. While we acknowledge that the packed weights are based on certain estimations and may not tie exactly to the FOP weights, as noted above, considering the importance of the use of the packed weight for shipping purposes, it is not unreasonable to assume that the packed weights and the FOP weights should be similar. CSWG suggests that the Department use a hybrid weight that includes the steel plate and flange weights from the COG calculation plus the FOP weights for all internal components. We find this suggestion unreasonable because it fails to address whether the reported FOPs capture all internal and other components needed to produce the finished product.

Because CSWG uses its reported packed weight of the subject merchandise for purposes of shipment and no other reasonable wind tower weight is available on the record, we find it appropriate to use, as facts available, CSWG's reported packed weight for purposes of determining whether CSWG's FOP inputs reasonably approximate the weight of the final product.

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, apply "the facts otherwise available" if (1) necessary information is not available on the record of an antidumping proceeding or (2) an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in 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 with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is submitted in a timely manner, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information.

We disagree with the WTTC that this case warrants the application of AFA under section 776(b) of the Act. Section 776(b) of the Act states that "if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority ... , the administering authority ... , in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."<sup>188</sup> Although we disagree with CSWG's arguments in regard to the difference between the sum of the FOP weights and the total weight of the finished product, we do not find that CSWG failed to act to the best of its

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<sup>188</sup> See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 at 890 (1994).

ability. CSWG responded to the Department's supplemental questionnaires and complied with the Department's requests at verification. Further, we agree with CSWG that we were able to determine that the individual FOP weights tested at verification were reported correctly.<sup>189</sup> We disagree with the WTTC that a comparison of CSWG's agreement(s) with its customer(s) to the reported FOPs shows that CSWG failed to act to the best of its ability by reporting certain components as factory overhead.<sup>190</sup> The record evidence shows that the agreement(s) referenced by the WTTC is not specific to a wind tower model.<sup>191</sup>

Therefore, we determine that an adverse inference is not warranted in this case and, instead, have relied on facts available pursuant to section 776(a)(1) of the Act. As facts available, we calculated a weighted-average per-unit surrogate value of all internal components and applied this per-unit surrogate value to the difference between the sum of the FOP weights, less recovered scrap, and the total weight of the subject wind tower(s). We included the resulting value in the calculation of CSWG's NV. We relied on the weighted-average per-unit surrogate value of internal components rather than steel plate or flanges because, as noted by CSWG,<sup>192</sup> we were not able to trace the weight of the internals used in the COG calculations to CSWG's FOPs for those inputs.

#### **Comment 5: Scrap Offsets**

##### *WTTC's Arguments*

- Given the lack of evidence quantifying reliable and accurate scrap offset amounts, scrap offsets are not warranted in this case. As such, the Department should continue to deny CSWG's steel and aluminum scrap offsets.
- The Department verified that CSWG's reported steel and aluminum scrap offsets were based on sales of steel and aluminum scrap rather than actual scrap generated during production.<sup>193</sup>
- CSWG failed to demonstrate the accuracy of its reported scrap offsets and the Department was unable to trace the offsets in any way to production during the POI.
- The Department's calculation of the steel yield loss ratio cited in the Department's Verification Report is not based on CSWG's actual production experience or production records, but rather was derived from a theoretical formula and engineered drawings.<sup>194</sup> These estimates do not quantify the actual difference between CSWG's reported steel scrap offset and the quantity of steel scrap generated in the production process.
- The documentation from CSWG's customer(s)<sup>195</sup> and CSWG's own documentation<sup>196</sup> indicate two different steel scrap ratios which are different from the Department's yield loss calculation discussed in the Verification Report.<sup>197</sup>

<sup>189</sup> See Verification Report at 37-43.

<sup>190</sup> See the WTTC's case brief at 6-7.

<sup>191</sup> See CSWG's March 20, 2012 section A response at exhibit A-13, appendix 8.

<sup>192</sup> See CSWG's case brief at 80.

<sup>193</sup> The WTTC refers to the Verification Report at 46-48.

<sup>194</sup> The WTTC refers to the Verification Report at 47-48.

<sup>195</sup> The WTTC refers to the Verification Report at 47-48.

<sup>196</sup> The WTTC refers to the Verification Report at 47-48.

<sup>197</sup> The WTTC refers to the Verification Report at 47-48.

## CSWG's Arguments

- Contrary to the W TTC's allegation, CSWG's steel scrap offset ratio and its steel yield loss ratio cannot be compared as they do not contain the same production materials in totality. The steel yield loss ratio is exclusive to the steel plate used for the production of skirts and door frames while the scrap offset ratio includes steel plate scrap sales plus the scrap sales of aluminum and steel used for other components or subassemblies other than skirts and door frames.<sup>198</sup>
- The production records and drawings support CSWG's reported actual yield loss, which is based on tighter cutting margins than specified by CSWG's customer(s).<sup>199</sup>
- The Department verified that the steel scrap sold is directly related to the production of wind towers and is generated from the production process.<sup>200</sup>
- CSWG does not calculate an aluminum yield loss in the normal course of business because there are hundreds of components and subassemblies made from dozens of different kinds/shapes of aluminum. As such, there is no possible way to determine a theoretical yield loss for aluminum.<sup>201</sup> Furthermore, steel plate is the single most critical input affecting the scrap and yield loss ratios, over 10 times greater than aluminum.<sup>202</sup>
- Documentation taken at verification and the difference between packed and net weight suggests that the scrap offset was accurately reported and is generally supported by actual production yields and scrap percentages derived from gross and net weights.<sup>203</sup>
- The Department has relied on the quantity of scrap sales, rather than the quantity of scrap generated, as the basis for the by-product offset in past cases where the respondent has shown that scrap is generated and sold on a monthly basis.<sup>204</sup> The Department verified that scrap generated in the production process has commercial value and that scrap is sold on a monthly basis.<sup>205</sup>
- The Department verified that the yield loss ratio for steel plate used in skirts and door frames closely approximated the steel scrap sales ratio which includes sales of steel plate used in skirts and door frames as well as scrap sales of steel used for components and subassemblies.<sup>206</sup> The inclusion of sales of steel scrap from these additional steel inputs would account for the slightly higher sales scrap ratio compared to the actual production yield ratio.
- At the very least, the Department should grant a steel scrap offset equal to the verified steel scrap ratio based on cutting plans and calculations of steel scrap generated during production of the subject merchandise.

**Department's Position:** We agree with CSWG, in part, and have granted a steel scrap offset equal to the sum of the yield loss ratio of steel plate used in the production of tower skirts and the

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<sup>198</sup> See CSWG's rebuttal brief at 12.

<sup>199</sup> *Id.*, at 13.

<sup>200</sup> CSWG refers to the Verification Report at 46-47, and verification exhibits 6 and 7.

<sup>201</sup> See CSWG's Rebuttal Brief at 14, footnote 1.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*, at 13.

<sup>204</sup> CSWG cites to *Silicon Metal from the PRC*, and accompanying IDM at Comment 3.

<sup>205</sup> CSWG refers to Verification Report at 46-47 and exhibits 6 and 7.

<sup>206</sup> CSWG refers to Verification Report at 46-47 and exhibits 6 and 7.

yield loss ratio of steel plate used in the manufacture of door frames. We have denied CSWG's aluminum scrap offset.<sup>207</sup>

While not specifically articulated in the statute or in the Department's regulations, it is the Department's practice to allow respondents an offset to the reported FOPs for scrap generated during the production of the merchandise under consideration if evidence is provided that such scrap has commercial value.<sup>208</sup>

In the instant case, CSWG reported steel and aluminum scrap offsets based on the quantity of scrap sales that occurred during the POI.<sup>209</sup> In the *Preliminary Determination*,<sup>210</sup> the Department denied CSWG's steel and aluminum scrap offsets as a method of accounting for the difference between CSWG's reported packed weight of the subject merchandise and the sum of the reported FOP weights. As discussed in Comment 4, above, we are addressing the difference in weights and CSWG's scrap offset as separate issues for this final determination.<sup>211</sup> We also note that CSWG in its rebuttal brief argues that the steel scrap offset includes both steel and aluminum scrap.<sup>212</sup> We disagree. CSWG reported its steel and aluminum offsets separately, and we verified that the steel scrap offset was separate and distinct from the aluminum scrap offset.<sup>213</sup> As such, we have treated the steel and aluminum scrap offsets separately for purposes of discussion and the margin analysis.

At verification, the Department confirmed that CSWG does not track nor inventory steel or aluminum scrap generated during production.<sup>214</sup> CSWG's only record of scrap quantities is its sales documentation.<sup>215</sup> We confirmed at verification that steel scrap sales occurred during each month of the POI.<sup>216</sup> Sales of aluminum scrap occurred in each month of the POI with the exception of April and August 2011.<sup>217</sup> During verification, the Department observed the storage of steel scrap in CSWG's production facility yard.<sup>218</sup> Based on these facts, the Department finds that CSWG has provided adequate support to show that scrap offsets are warranted.

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<sup>207</sup> As noted in the Verification Report at 3, CSWG's reported aluminum scrap offset was revised as a result of the minor correction involving certain aluminum internal components.

<sup>208</sup> See, e.g., *Multilayered Wood Flooring from the PRC*, and accompanying IDM at Comment 23; *Ribbons from the PRC*, and accompanying IDM at Comment 2.

<sup>209</sup> See Verification Report at 46.

<sup>210</sup> See Preliminary Surrogate Value Memorandum at 6; Preliminary Analysis Memorandum at attachment V.

<sup>211</sup> For consistency purposes, the Department has included in the revised scrap offsets in the sum of the FOP weights used to determine the adjustment to NV for the weight discrepancy.

<sup>212</sup> See CSWG's rebuttal brief at 12.

<sup>213</sup> See Verification Report at 46 and exhibit 7.

<sup>214</sup> *Id.*, at 46.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* Aluminum scrap is not sold in the local market. Instead, CS Wind Vietnam ships the aluminum scrap to CS Wind Korea for sale in the Korean market and such shipments are made only when enough scrap has been generated to fill an entire shipping container. See Verification Report at 15.

<sup>218</sup> See Verification Report at 46.

However, during the POI, CSWG produced both subject and non-subject merchandise of steel and aluminum inputs.<sup>219</sup> In such instances where scrap is generated from the production of subject and non-subject merchandise, the Department's practice, which has been upheld by the court,<sup>220</sup> is to limit the scrap offset to the quantity of scrap generated in production of the subject merchandise.<sup>221</sup> Because CSWG's scrap sales documents do not provide any information that would allow the Department to determine the quantity of the scrap sold which relates to the production of the subject merchandise, we looked to other record information. For steel plate, we relied on CSWG's yield loss ratios for tower skirts<sup>222</sup> and door frames that are incorporated into the subject merchandise. We find these yield loss ratios to be a reasonable measure of the steel scrap generated in the production of the subject merchandise because these ratios are based on specific cutting instructions issued by CS Wind Corporation's engineering department to CS Wind Vietnam for the subject merchandise in the normal course of business.<sup>223</sup> Furthermore, we verified that the input and output dimensions shown in the cutting instructions were the same as the dimensions as the steel plate purchased by CSWG and the cut steel plate incorporated into the final product.<sup>224</sup>

In regard to the aluminum scrap offset, CSWG explained in its rebuttal brief that, because there are hundreds of component and subassemblies made from dozens of different kind/shapes of aluminum, there is no possible way to determine a theoretical yield loss for aluminum.<sup>225</sup> As such, unlike the steel scrap ratio, we do not have an aluminum yield loss ratio to rely on as a basis of determining the quantity of aluminum scrap associated with the production of the subject merchandise. CSWG manufactures numerous aluminum components and subassemblies not only for the subject wind towers but also for non-subject wind towers and as finished goods (*e.g.*, aluminum platforms sold separately).<sup>226</sup> CSWG's claimed aluminum scrap offset was determined by dividing the company's total aluminum scrap sales for the POI by the total quantity of aluminum consumed during the POI and applying the resulting ratio to the aluminum FOPs reported for the subject merchandise.<sup>227</sup> This methodology, in effect, spreads the total aluminum scrap sold over all aluminum consumed as if all of the hundreds of aluminum components and subassemblies produced generated the same proportion of aluminum scrap. We find this methodology to be unreasonable in this case because of the diverse mix of aluminum products manufactured by CSWG.<sup>228</sup> CSWG has not provided a meaningful way of allowing the Department to determine a reasonable aluminum scrap offset and the burden rests with the respondents to substantiate by-product offsets by providing the Department with sufficient information to support their claims.<sup>229</sup> Therefore, we have denied CSWG's aluminum scrap offset for purposes of the final determination.

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<sup>219</sup> See, *e.g.*, Verification Report at exhibit 5.

<sup>220</sup> See *Temper*, 31 CIT at 1308.

<sup>221</sup> See, *e.g.*, *Candles from the PRC*, 69 FR at 12125.

<sup>222</sup> Steel plate is cut, beveled, and bent to create a "skirt." The seam of the skirt is welded and the skirt is either fitted to another skirt or to a flange. The skirts are then welded together or to a flange to create a tower section. See Verification Report at 13.

<sup>223</sup> See Verification Report at 46.

<sup>224</sup> *Id.*, at 46-47 and exhibit 18I.

<sup>225</sup> See CSWG's rebuttal brief at 14, footnote 11.

<sup>226</sup> See, *e.g.*, CSWG's June 1, 2012, submission at 2.

<sup>227</sup> See, *e.g.*, exhibit 7 of the Verification Report.

<sup>228</sup> See, *e.g.*, exhibit 13 of the Verification Report.

<sup>229</sup> See *Ass'n of Am. School Paper Suppliers*, 32 CIT at 1207.

## Comment 6: Market-Economy Purchased Materials

### *CSWG's Argument:*

- In the *Preliminary Determination*, the Department erred in rejecting the actual, ME prices reported by CSWG for (1) steel flanges, (2) welding flux and (3) welding wire, which were manufactured in Korea and purchased domestically from Korean suppliers, on the grounds that these inputs were sourced from a country in which non-industry specific export subsidies are broadly available.
- The reported ME prices for these inputs should be used for the final determination because there are no export subsidies evident on the record.
- The actual prices for the above-referenced inputs are domestic prices set between unaffiliated entities, and that neither CS Wind Corporation, the Korean exporter, nor its Korean suppliers or trading company intermediaries, applied for or received export subsidies during the POI.
- The record shows that CSWG made domestic purchases of these inputs pursuant to arm's length domestic pricing mechanisms.
- CS Wind Corporation was also the exporting party, as evidenced by export documentation on the record of this investigation.
- Moreover, sales of flanges to CS Wind Corporation by another supplier were transacted via a foreign trading company representing said supplier. Accordingly, since the trading company representing such a supplier is a foreign entity, it is not in a position to apply for export subsidies provided by the Korean government.
- A statement by the finance manager, who oversees the preparation of CSWG's financial statements, indicates that the company did not receive any government benefits for the export of steel materials or components used in the production of wind towers.<sup>230</sup> Furthermore, the record includes a statement by an official, working for one of CSWG's suppliers of flanges, indicating that this supplier was not the exporting party and that said supplier did not apply for or receive any export subsidies.
- In addition, the inputs for welding flux and welding wire were also purchased by CS Wind Vietnam from a Korean manufacturer, which acted as the seller/exporter. The payment terms involving these sales transactions rule out the possibility that the exporter applied for or received benefits under the Korean Export Import Bank's ("KEXIM") Trade Bill Rediscounting Program ("TBR Program") or that the exportation of the referenced inputs was covered by any general Korean export subsidy that could have been received by the exporter.
- The Court of International Trade ("CIT") has found that Commerce has a reason to believe or suspect that an input may be subsidized if it can demonstrate by specific and objective evidence that: (1) subsidies of the industry in question existed in the supplier countries during the POI; (2) the supplier in question is a member of the subsidized industry or otherwise could have taken advantage of any available subsidies; and (3) it would have been unnatural for a supplier not to have taken advantage of such subsidies.<sup>231</sup>

<sup>230</sup> See CSWG's August 6, 2012, pre-verification submission of factual data at exhibit 1.

<sup>231</sup> See *Fuyao Glass II*, 29 CIT at 114.

- Neither the Department nor the WTTC has provided any substantial, specific, and objective evidence in support of their suspicion that the reported prices are distorted by export subsidies.<sup>232</sup> The Department provided no lists or other evidence of the generally-available subsidy programs available in Korea which apply to the above-referenced inputs.<sup>233</sup>
- Notwithstanding the above, if the Department decides not to use the actual ME prices for welding flux and welding wire, it should use the domestic Indian surrogate values placed on the record by CSWG for those inputs because such surrogate values are specific, accurate and reliable.

*The WTTC's Argument:*

- The Department should disregard CSWG's arguments and continue its longstanding practice of not using purchase prices from an ME, such as Korea, for the valuation of inputs, when the Department has a reasonable basis to believe or suspect that the product benefits from broadly available export subsidies.<sup>234</sup>
- Although this policy is generally applicable to the selection of surrogate values, it has also been used by the Department as justification for disregarding ME purchase prices in favor of surrogate prices, a practice that has been upheld by the CIT and the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit").<sup>235</sup>
- In upholding the Department's practice, the CIT acknowledged that although the Department "has a duty to calculate dumping margins as accurately as possible and should typically refrain from using surrogate values ... where market-determined values are available," the Department "cannot be compelled to use actual prices where it has reason to believe or suspect that such prices are subsidized."<sup>236</sup>
- The Department also determined in other proceedings that Korea "maintains broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from this country may be subsidized."<sup>237</sup>
- The Department also found it appropriate to disregard prices from Korea, among other countries, because the Government of Korea "maintain{s} broadly available, non-industry specific export subsidies."<sup>238</sup>
- Contrary to CS Wind's contention, the Department is under no obligation to conduct a formal investigation to ensure that such prices are not subsidized.<sup>239</sup> The Department's practice is merely to have a reason to believe or suspect that prices in an ME country are distorted through broadly available subsidies.

<sup>232</sup> See *CMC II*, 293 F. Supp. 2d at 1339; *Sichuan Changhong*, 30 CIT at 1494; *Fuyao Glas I*, 27 CIT 1892; and *Fuyao Glass II*, 29 CIT at 114; see also *Color TVs from the PRC*, and accompanying IDM at Comment 7.

<sup>233</sup> See *Sichuan Changhong*, 30 CIT at 1494.

<sup>234</sup> See *Carbon Steel Plate from Romania*, and accompanying IDM at Comment 4.

<sup>235</sup> See *CMC II*, 293 F. Supp. 2d at 1336; *Zhejiang Machinery*, 473 F. Supp. 2d at 1376-77.

<sup>236</sup> See *CMC II*, 293 F. Supp. 2d at 1336.

<sup>237</sup> See, e.g., *Activated Carbon from the PRC*, 76 FR at 23987.

<sup>238</sup> See, e.g., *Citric Acid from the PRC*, 77 FR at 33403 (citing *CORE from Korea*, and accompanying IDM at 17, 19-20).

<sup>239</sup> See *Activated Carbon from the PRC*, 76 FR at 23987 (citing OTCA 1988 House Conference Report at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24).

- While CSWG cites to the CIT’s holdings in *Fuyao II and CMC II*, requiring “specific and objective evidence” of subsidies, the Federal Circuit has not yet ruled on this issue but has previously found that the use of surrogate values are appropriate where the Department has reason to believe or suspect that ME prices are distorted through subsidization.<sup>240</sup>
- CSWG does not produce any wind towers in Korea, and has production facilities only in China, Vietnam, and Canada. As such, to the extent that CS Wind Corporation bought flanges, welding wire, and welding flux in Korea, it did so with the intent to export those products to other countries, rather than consume them within Korea. Accordingly, these purchases were export purchases and subject to the widely-available export subsidies available to Korean exports. These prices, therefore, are inherently distorted and should not be used.
- The statement CSWG provided from an individual working for one of its flange supplier, indicating that said supplier did not apply for or receive subsidies from the Korean government, is not sufficiently supported by record evidence in that this individual is not in a position to know whether this supplier actually received subsidies.
- The record contains an excerpt from one of the supplier’s website, which indicates that said supplier has received “awards” from the Korean government based on the value of its exports.<sup>241</sup>
- CSWG did not present any evidence that the second supplier of flanges did not apply for or receive subsidies from the exportation of flanges.
- CSWG’s argument as to whether or not the relevant parties availed benefits under the TBR Program in no way demonstrates that these same parties could not or did not avail benefits from any of the other export subsidy programs.

**Department’s Position:** We disagree with CSWG’s assertion that the nature of the domestic transactions between the company and its Korean suppliers of flanges, welding wire and welding flux is, in and of itself, evidence that the exportation of said inputs could not have benefitted from broadly available, non-industry-specific export subsidies in Korea. We also disagree with CSWG’s contention that there is no evidence in support of the Department suspicion that the reported prices may be distorted by export subsidies.

In the *Preliminary Determination*, the Department noted that CSWG reported that it purchased flanges, welding flux, and welding wire domestically from Korean suppliers. However, the Department stated that, while these inputs were purchased domestically in Korea, they were exported by CS Wind Corporation, located in Korea, to its wholly-owned subsidiary CS Wind Vietnam Co., Ltd., the producer of the merchandise under consideration in Vietnam. The Department also noted that, in other proceedings, we have found that Korea maintains broadly available, non-industry-specific export subsidies. Therefore, we concluded that it is reasonable to infer that all exports from these countries to all markets may be subsidized.<sup>242</sup> Accordingly,

<sup>240</sup> See *CMC II*, 293 F. Supp. 2d at 1339.

<sup>241</sup> See the WTTC’s August 6, 2012, submission of additional factual information at exhibit 2.

<sup>242</sup> See, e.g., *Color TVs from the PRC*, and accompanying IDM at Comment 7; see also *CORE from Korea*, and accompanying IDM at 17, 19-20.

we did not use CSWG's reported prices for flanges, welding flux, and welding wire. Instead, we relied on surrogate values to value said inputs.<sup>243</sup>

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly-available surrogates to value FOPs, but when a producer sources an input from an ME and pays for it in an ME currency, the Department will normally value FOPs using the actual price paid for the input. However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the ME purchase prices and use surrogate values to determine the NV.<sup>244</sup> Where the facts developed in either U.S. or third-country CVD findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non-industry specific export subsidies), the Department will have reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized.<sup>245</sup> In accordance with the OTCA 1988 House Conference Report,<sup>246</sup> the Department continues to apply its long-standing practice of disregarding prices if it has a reason to believe or suspect that the source data may be subsidized. In this regard, the Department has previously found that it is appropriate to disregard such prices from Korea because we have determined that Korea maintains broadly available, non-industry specific export subsidies.<sup>247</sup> Based on the existence of subsidy programs that are generally available to all exporters and producers in Korea at the time of the POI, the Department finds that it is reasonable to infer that all exporters from Korea may have benefitted from these subsidies. We note that, in avoiding the use of prices that may be subsidized, the Department need not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination.<sup>248</sup>

CS Wind Corporation and the trading companies/suppliers of flanges were not the only parties aware that this input was ultimately destined for exportation to Vietnam. Record evidence includes the Certificates of Origin for flanges purchased by CS Wind Corporation from one of CS Wind Corporation's suppliers and manufacturers of flanges in Korea, which identify that manufacturer as the "Exporter" of flanges and CS Wind Vietnam, in Vietnam, as the Consignee. These Certificates are also signed by the director of that manufacturing facility, under the line item "Declaration by the Exporter" of the Certificate of Origin.<sup>249</sup> Similarly, for flanges purchased by CS Wind Corporation from another manufacturer, which was represented by a foreign trading company, the Certificates of Origin involving the sales of that input identify the exporter as the manufacturer itself, not the foreign trading company, and CS Wind Vietnam, in Vietnam, as the "Consignee." These certificates were also signed by the president of the manufacturing facility under the line item "Declaration by the Exporter" of the Certificate of Origin.<sup>250</sup> These manufacturers could have benefitted from broadly available, non-industry-specific export subsidies in Korea.

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<sup>243</sup> See Preliminary Analysis Memorandum.

<sup>244</sup> See *Tapered Roller Bearings (1998-1999)*, and accompanying IDM at Comment 1.

<sup>245</sup> *Id.*; see also *CMC II*, 293 F. Supp. 2d at 1338-39.

<sup>246</sup> See OTCA 1988 House Conference Report at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.

<sup>247</sup> See, e.g., *CORE from Korea*, and accompanying IDM at 17, 19-20; *Bottom Mount Combination Refrigerator-Freezers from Korea*, and accompanying IDM at 14-16.

<sup>248</sup> See OTCA 1988 House Conference Report at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.

<sup>249</sup> See Verification Report at exhibit 18.C, page 14.

<sup>250</sup> *Id.*, at exhibit 18.C, page 59.

Moreover, the mill certificate involving flanges provided by the Korean manufacturer, who is represented by a foreign trading company, referenced the wind tower project name and the U.S. customer name.<sup>251</sup> Further, the inspection certificate supplied by the other manufacturer of flanges references CS Wind Vietnam.<sup>252</sup> This evidence indicates that the manufacturers of flanges, who were also designated as the exporters of this input, apparently had knowledge that the inputs they were producing were destined for exportation.

In addition, as the WTTC notes, the e-mails placed on the record by CSWG from an individual working for one of the manufacturers of flanges, in and of itself, is not sufficient to demonstrate that the supplier did not apply for or receive benefits resulting from the exportation of the flanges. Information provided by the WTTC on the record of this investigation indicates that the above-referenced individual works as a sales manager for that flange supplier and may not be in a position to have personal knowledge of whether that manufacturer received subsidies from the Korean government.<sup>253</sup> However, additional record information indicates that said manufacturer has historically received “awards” from the Korean government based on the value of its exports.<sup>254</sup>

With respect to welding flux and welding wire, record evidence indicates that the manufacturers of these inputs were also the exporters of such inputs to CS Wind Vietnam, in Vietnam. In this regard, while CSWG contends that the exporters of welding flux and welding wire could not have received export benefits under a specific export subsidy program (*i.e.*, KEXIM’s TBR Program), there is no record evidence indicating that the exporters of these inputs did not receive benefits under other broadly available, non-industry specific export subsidies in Korea.<sup>255</sup>

Given the facts noted above, we find that all parties involved in the production, sales, shipments, and exportation of flanges, welding flux and welding wire had prior knowledge that these inputs were destined for exportation. Accordingly, we believe that it is reasonable to infer that, along the chain of commerce involving the manufacture, sales, and exportation of such inputs, a party would have taken advantage of broadly available, non-industry specific export subsidies provided by the Korean government. It would have been contrary to the economic interest of a party eligible for such subsidies not to have taken advantage of them.

CSWG argues that the Department has provided no substantial, specific, and objective evidence in support of its suspicion that the reported prices are distorted by export subsidies. In support of its argument, CSWG claims that the CIT’s holdings in *Fuyao II* and *CMC II* require specific and objective evidence that: (1) subsidies of the industry in question existed in the supplier countries during the POI; (2) the supplier in question is a member of the subsidized industry or otherwise could have taken advantage of any available subsidies; and (3) it would have been unnatural for a supplier not to have taken advantage of such subsidies.<sup>256</sup> We note, however, that the CIT itself

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<sup>251</sup> See CSWG’s July 5, 2012, submission at exhibit S7-29.

<sup>252</sup> See CSWG’s April 27, 2012, submission at exhibit S3-3.

<sup>253</sup> See the WTTC’s August 15, 2012, submission of rebuttal factual information at exhibits 1 and 2.

<sup>254</sup> See the WTTC’s August 6, 2012, submission of additional factual information at exhibit 2.

<sup>255</sup> See, e.g., *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

<sup>256</sup> *Fuyao II*, 29 C.I.T. at 114.

has recognized that the test articulated in *Fuyao II* has “generated some controversy and is yet to be resolved.”<sup>257</sup> Moreover, while the Federal Circuit has not yet ruled on this issue, it has previously found that the use of surrogate values is appropriate where the Department has reason to believe or suspect that ME prices are distorted through subsidization.<sup>258</sup>

We also note that, in numerous determinations following *Fuyao II* and *CMC II*, the Department has continued to disregard ME purchases from countries, such as, Korea, Thailand, and Indonesia based on the Department's prior determinations that broadly available, non-industry specific export subsidies exist in those countries.<sup>259</sup> In this investigation, the Department, consistent with its longstanding practice, has disregarded prices from Korea because prices from this country, as indicated above, may be distorted as a result of broadly available export subsidies. Furthermore, the Department's decision not to use prices from countries providing generally available, non-industry specific export subsidies, such as, Korea, Thailand, and Indonesia, has been upheld by the CIT. Recently, in *Jinan Yipin*, the Court upheld the Department's decision not to use export data from Thailand, South Korea and Indonesia because the Department had reason to believe or suspect that export subsidies affected exports from those countries, as evidenced by the Department's prior published CVD determinations.<sup>260</sup> *Jinan Yipin* establishes that the Department's prior CVD determinations, pertaining to countries, such as Korea, in which broadly available, non-industry-specific export subsidies exist, provide sufficient reason for the Department to believe or suspect that prices from such countries may be distorted by export subsidies. Accordingly, we find no merit in CSWG's argument that the Department had no reason to believe or suspect that Korean prices for flanges, welding flux and welding wire may be distorted as a result of generally available, non-industry specific export subsidies. In fact, as described above, it would seem not in one's economic interest not to have taken advantage of such subsidies.

For the reasons noted above, we continue to find that the Korean prices provided by CSWG for flanges, welding flux and welding wire may have been distorted by broadly available, non-industry-specific export subsidies in Korea. We have considered the evidence provided by CSWG to attempt to rebut the Department's reasonable basis to believe or suspect that the inputs benefitted from export subsidies, but find this evidence insufficient for the reasons noted above. Accordingly, consistent with its *Preliminary Determination* and based on the fact that no additional record evidence has been submitted sufficient to support a conclusion to the contrary, the Department continues to use surrogate values, in lieu of the Korean prices, for the valuation of CSWG's reported inputs for flanges, welding wire, and welding flux for purposes of the final determination of this investigation. For further details regarding the surrogate values used for welding flux and welding table, as well as flanges, see the Final Surrogate Value Memorandum.

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<sup>257</sup> *Zhejiang Machinery*, 473 F. Supp. 2d at 1372 n.10.

<sup>258</sup> See *CMC II*, 293 F. Supp. 2d at 1339, *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004).

<sup>259</sup> See, e.g., *Shrimp from the PRC (2012)*, and accompanying IDM at Comment 10.

<sup>260</sup> See *Jinan Yipin*, 774 F. Supp. 2d at 1248.

## Comment 7: Idle Labor

### *WTTC's Arguments*

- The Department discovered at verification that CSWG excluded idle production time labor hours from its reported labor FOPs. Given the amount of unreported labor hours, the deliberate decision to exclude the idle labor hours, and the failure to address this discrepancy in the ministerial errors submission, CSWG did not act to the best of its ability when reporting its labor FOPs. As such, the Department should apply AFA to the unreported labor hours.
- As AFA, the Department should double the labor rate used in the *Preliminary Determination* and apply the resulting labor rate to the total quantity of unreported labor hours.
- Idle production labor is no different than indirect labor. The idle labor hours may not relate directly to production; nonetheless, the hours are worked, the employees paid, and the resulting expenses are included in CSWG's manufacturing experience.
- If the Department were to classify these labor hours as overhead or SG&A expenses as suggested by CSWG, the Department will effectively exclude this labor from the calculation of NV. The Indian surrogate financial statements on the record of this case do not identify this type of labor. As such, the overhead and SG&A ratios calculated based on these financial statements do not include such labor. This situation is identical in principle to the double-counting issue in *Copper Pipe and Tube from the PRC*.<sup>261</sup> To ensure that the cost of this labor is captured in NV, the Department must include it in the indirect or direct labor FOPs.

### *CSWG's Arguments*

- The Department, in its Verification Report, erred in its description of the idle labor hours as idle time during production. The labor hours in question are non-working time after production prior to new orders being commenced.
- When a project is completed, there can be days, weeks, even months before another project is commenced. However, because the workers are highly skilled for the specific production steps required in producing a wind tower, the company must continue to pay the workers or the workers would leave the company. These retention payments made to the workers are overhead costs, not direct labor costs associated with and linked specifically to a tower/and or project. The Department has adopted a similar position in other cases where idled labor hours not related to production were allocated to overhead.<sup>262</sup>
- Down-time labor hours, which represent those hours during production of towers and/or projects when workers are waiting for delivery of materials or components, inspections to be completed, or painting/coating to dry, have been captured in the reported direct labor hours for the subject merchandise.

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<sup>261</sup> See *Copper Pipe and Tube from the PRC*, and accompanying IDM at Comment 17.

<sup>262</sup> CSWG cites *Silicon Metal from Brazil*, and accompanying IDM at Comment 9.

- The WTTC's claim that AFA should be applied to the idle labor hours is unfounded because the idle labor hours were fully disclosed at verification and the exclusion of these labor hours from the direct labor FOPs is consistent with the Department's practice.

**Department's Position:** We agree with the WTTC, in part, and have increased CSWG's reported indirect labor hours to include the labor hours associated with idle time between production orders. As facts available, we have valued the idle labor hours using the same Chapter 6A surrogate value we used to value CSWG's reported indirect labor hours. At verification, the Department discovered that CSWG excluded certain labor hours from its reported indirect labor hours.<sup>263</sup> CSWG officials explained that the excluded labor hours relate to idle time during production.<sup>264</sup> As such, CSWG determined that these hours were not related to production and excluded the idle hours from the calculation of the labor FOPs. We agree with the WTTC that, although CSWG's idle labor hours are not directly related to production of the merchandise under consideration, the hours are worked and the employees were paid.

CSWG relies on *Silicon Metal from Brazil* as evidence that the Department's practice is to include idle labor hours as SG&A expenses rather than direct labor.<sup>265</sup> CSWG concludes that its idle labor hours should therefore be excluded from the calculation of NV. We disagree. In this case, we are valuing direct and indirect labor hours based on Chapter 6A data for India, the surrogate country. In *Labor Methodologies*, the Department determined that the best data source for industry-specific labor rates is Chapter 6A from the ILO Yearbook based on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs.<sup>266</sup> Specifically, in *Labor Methodologies Request for Comments*, the Department noted that ILO defines Chapter 6A labor data to include "remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labor cost."<sup>267</sup> Because the Chapter 6A data specifically include "payments in respect of time paid for not worked," we find it reasonable to include the idle labor hours in CSWG's indirect labor FOP.

Because necessary information is not on the record as a result of CSWG excluding idle production time from its reported labor FOPs, we are relying upon facts available pursuant to section 776(a)(1) and (2)(A) of the Act and valuing the idle labor hours using the same Chapter 6A surrogate value used to value CSWG's reported indirect labor hours. Because CSWG complied with the Department's requests at verification, we find that CSWG cooperated to the best of its ability and are not applying AFA under section 776(b) of the Act.

<sup>263</sup> See Verification Report at 43.

<sup>264</sup> See Verification Report at 43.

<sup>265</sup> See CSWG's case brief at 84.

<sup>266</sup> See *Labor Methodologies*, 76 FR at 36093-94; see also *Preliminary Determination*, 77 FR at 46065-66.

<sup>267</sup> See *Labor Methodologies Request for Comments*, 76 FR at 9545 .

## Comment 8: Oxygen

### *WTTC's Arguments*

- The Department should continue to apply the surrogate value for oxygen gas. Given that the record contains contradictory information identifying the input both as a gas and a liquid, the Department should apply the average of the gas and liquid oxygen surrogate values.

### *CSWG's Arguments*

- In the *Preliminary Determination*, the Department relied on the Borukha Gases Financial Statement price for gaseous oxygen. However, the documents examined and collected by the Department during verification demonstrate that the type of oxygen used is liquid oxygen, not gaseous oxygen. Therefore, for the final determination, the Department should rely on the Borukha Gases Financial Statement price for liquid oxygen.

**Department's Position:** We agree with CSWG that the documents examined and collected by the Department at verification demonstrate that the type of oxygen used in the manufacture of the subject merchandise is liquid oxygen, not gaseous oxygen.<sup>268</sup> Therefore, we have relied on the Borukha Gases Financial Statement price for liquid oxygen for purposes of valuing CSWG's oxygen inputs.<sup>269</sup>

## Comment 9: Carbon Dioxide (CO<sub>2</sub>)

### *WTTC's Arguments*

- The Department should continue to rely on GTA data to value CSWG's CO<sub>2</sub> inputs because the financial statements submitted by CSWG are not contemporaneous with the POI and there is no evidence that the prices for CO<sub>2</sub> contained in those financial statements actually reflect broad market values.

### *CSWG's Arguments*

- In the *Preliminary Determination*, the Department valued CO<sub>2</sub> using GTA data, specifically HTS 28112190 – “carbon dioxide in other form.”
- The April 1, 2010 through March 31, 2011 financial statements for SICGIL Indian Ltd. (SICGIL), submitted in CSWG's post-preliminary surrogate value submission, provide relevant pricing information for CO<sub>2</sub>.
- SICGIL specializes in the production, sale, and distribution of CO<sub>2</sub> gases. SICGIL's financial statements provide ex-factory sale prices for sales of CO<sub>2</sub> gas to unaffiliated customers. This price data is tax and duty exclusive. It represents market prices from a variety of domestic sales through the Indian market transacted at arm's length. As such, this price data is preferable to the GTA data for HTS 28112190, which references import prices for a generic basket category consisting of a variety of physical forms of CO<sub>2</sub>.

<sup>268</sup> See Verification Report at exhibit 18.J.

<sup>269</sup> See Final Surrogate Value Memorandum.

- The SICGIL price data is consistent with the Department's policy of preferring domestic prices over import prices, particularly in instances where import prices are prohibitively high such that a domestic producer would not choose imported materials over domestic materials.

**Department's Position:** We agree with the WTTC and have continued to value CSWG's CO<sub>2</sub> gas using the GTA data, specifically HTS 28112190, used in the *Preliminary Determination*.

The Department evaluates potential surrogate values based on a well established set of criteria which includes a strong preference for valuing all FOPs in the primary surrogate country,<sup>270</sup> as well as a preference for prices which are period-wide, representative of a broad market average,<sup>271</sup> specific to the input in question, net of taxes and import duties, contemporaneous with the period under consideration, and publicly available.<sup>272</sup> While we find the SICGIL price data to be reflective of the primary surrogate country, specific to the input in question, and net of taxes and import duties, we are not able to determine, based on our review of SICGIL's financial statements, whether or not the SICGIL price data is representative of a broad market average. Moreover, the SICGIL prices are not contemporaneous with the POI. The GTA data under HTS 28112190 represent imports of CO<sub>2</sub> in forms other than dry ice. Although these data are not specific to CO<sub>2</sub> gas as is the SICGIL data, the GTA data are reflective of the primary surrogate country, representative of a broad market average, net of taxes and import duties, contemporaneous with the period under consideration, publicly available, and include imports of the input in question. Therefore, we find the GTA data to be a more reasonable surrogate value because it meets more of the Department's surrogate value criteria than the SICGIL data.

### **Comment 10: Base Rings**

#### *WTTC's Argument:*

- Base rings are subject merchandise and are included within the scope of this investigation. The WTTC did not intend to limit the definition of a wind tower section by the number of steel plates in the section but, rather, stated simply that "a wind tower section consists of a steel shell segment." Such a steel shell segment could consist of a single steel plate or multiple steel plates.
- Base rings form the base of the wind tower and are therefore necessarily included in the height of the tower as measured from the base of the tower to the bottom of the nacelle.
- The scope language does not distinguish between the type, or number, of sections encompassed in the overall height. Indeed, because there are no uniform standards requiring an Original Equipment Manufacturer ("OEM") to divide wind towers into a certain number of sections, the overall height of the tower is all that matters.
- Further, as the name implies, the base ring forms the "base" of the tower upon which the sections are placed to form an assembled tower. A measurement "from the base," as the *Initiation Notice* states, would necessarily include the height of the base ring.<sup>273</sup>

<sup>270</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 9.

<sup>271</sup> See, e.g., *Fish Fillets from Vietnam*, and accompanying IDM at Comment 3.

<sup>272</sup> See NME Surrogate Selection Policy Bulletin at 4.

<sup>273</sup> See *Initiation Notice*, 77 FR at 3446.

Therefore, as has been clear from the beginning of this investigation, base rings are an integral part of a complete wind tower and as such are included in the height of the wind tower as subject merchandise.

*CSWG's Argument:*

- The Department should continue to exclude base rings from the scope of the final dumping order. Sections and base rings are two separate and distinct articles of commerce. They are not part of the same wind tower structure, which consists of finished, assembled sections, as defined by the WTTC since the very start of this proceeding.
- In the several thousand pages included in the original antidumping duty and CVD petitions against China and Vietnam, including the supplemental petitions and the detailed scope descriptions, base rings (or foundations) were not discussed once. Through the explicit and obvious absence of any reference to base rings (or foundations), the WTTC clearly did *not* intend these items to be included in the scope of the investigation. They should continue to be excluded.
- The production and sale of foundations, including base rings, is treated as an entirely separate business from wind tower production because they require separate specifications, materials, design drawings, purchase orders, invoices and payment from the actual tower sections.
- The WTTC is now attempting to revise and redefine its scope language, which explicitly excluded any mention of base rings, by muddling the definition of sections and steel can/cones with the definition of base rings, and trying to draw a distinction between single and multiple steel plates.
- The finished steel shells for sections and finished steel shells for base rings are not comparable and are not fungible.

**Department's Position:** The Department has determined that base rings are not included in the scope of this investigation. As an initial consideration, the respondent in this investigation neither produced nor sold base rings during the POI.<sup>274</sup> Nevertheless, based on the comments received from interested parties, as well as the scope of the investigation, which states that "a wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell,"<sup>275</sup> The Department determines that base rings do not qualify as a wind tower section when they consist of only one single steel plate.

The Department finds the WTTC's arguments regarding base rings to be unpersuasive. First, the WTTC is incorrect that its intent to include base rings in the scope of this investigation is evident from the petition. In the petition, the WTTC never claimed that base rings are an integral part of a wind tower. In fact, the WTTC stated that "depending on the overall height and design, the tower will generally be produced and shipped in three to five sections that are assembled at the project site."<sup>276</sup> Therefore, according to the petition, a tower is constructed of sections. Notably

<sup>274</sup> See CSWG's July 3, 2012, submission at 1-3 and Exhibit S8-1.

<sup>275</sup> See, e.g., *Preliminary Determination*, 77 FR at 3446.

<sup>276</sup> See Petition, Volume 1 at 8.

absent from the petition's description of a tower is any mention of base rings. Moreover, the clear intent of the petition was to limit the definition of a wind tower section by the number of steel plates in the section. The Department has previously considered post-petition submissions of supplemental information from a petitioner when determining the petition's intent.<sup>277</sup> In this investigation, in response to a request by the Department to clarify the term "sections" in the scope of the petition, the WTTC stated that "utility scale wind towers are produced from multiple pieces of steel plate rolled into conical and cylindrical shapes and welded together to form the steel shell of a wind tower subassembly."<sup>278</sup> These subassemblies, according to the WTTC, are referred to as wind tower sections.<sup>279</sup> Accordingly, the WTTC revised its proposed scope to state that "a wind tower section typically consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell with or without flanges."<sup>280</sup> Therefore, the Department has determined that the WTTC intended to limit the definition of wind tower sections to items consisting of more than one steel plate.

For these reasons, we conclude that the WTTC's argument that it intended to include base rings in the petition is not supported by the evidence on the record. Moreover, contrary to the WTTC's argument, the fact that the scope explicitly covers wind towers with a minimum height of 50 meters "measured from the base of the tower to the bottom of the nacelle" is not evidence that base rings are included within the scope. Finally, while the information available on record indicates that base rings are not part of the towers sold by the respondent in this investigation, even if the respondent sold base rings separately, unattached to the tower, such base rings would not be subject to the scope, which states that any internal or external components that are not attached to the wind towers or sections are excluded. Therefore, for the reasons noted above, the Department has determined that base rings are not included in the scope of this investigation.

### **Comment 11: Brokerage & Handling**

#### *CSWG's Argument:*

- In its *Preliminary Determination*, the Department valued non-market brokerage and handling ("B&H") using the traditional source, *Doing Business 2012: India*, published by the World Bank ("*Doing Business*"). It used three separate charges to value CSWG's B&H expense: documents preparation; customs clearance and technical control; and ports and terminal handling. The Department then allocated these charges over a standard 20-foot container.
- The Department erred on two counts. First, as verified by the Department, the only B&H charge incurred by CSWG is the customs clearance charge. Second, as also verified by the Department, these customs fees are not charged per container but per shipment, as large tower sections cannot be containerized.
- The Department's Verification Report contains a misstatement indicating that the Vietnamese customs agency also charged CSWG for other expenses relating to the

<sup>277</sup> See, e.g., *Electrodes from the PRC (2009)*, and accompanying IDM at Comment 2.

<sup>278</sup> See Letter from Petitioner to the Secretary of Commerce, regarding "Utility Scale Wind Towers from the People's Republic of China and The Socialist Republic of Vietnam: Supplement to Petition for the Imposition of Antidumping Duties and Countervailing Duties" (January 11, 2012) at 12.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*, at exhibit I-5.

transportation of vehicles into the Vietnamese ports and for handling charges, which were not incurred by CSWG.

- Since the only charges incurred by CSWG are related to customs clearance, the Department should only divide the fees for “customs clearance and technical control,” provided in *Doing Business* by the total weight of each shipment in order to arrive at B&H per tower weight; and not divide such fees by a standard container size.

*The WTTC’s Argument:*

- CSWG appears to misunderstand the basis for the Department’s B&H surrogate value. The basic methodology applied in the *Doing Business* publications, which the Department has relied on in numerous cases to derive the surrogate value for B&H expenses, assumes B&H expenses for a 20-foot container. The Department then divides the total B&H fees for a container by the total kgs in that container in order to derive B&H on a per-kg basis. Accordingly, whether towers are containerized or not is irrelevant.
- Given that CSWG reported the total weight of its towers in kgs, the Department in the *Preliminary Determination* properly applied its per kg B&H SV by multiplying it by the total weight of the tower. CSWG’s methodology, which would have the Department assume that total fees from *Doing Business* reflected each shipment, would significantly understate the B&H adjustment.

**Department’s Position:** We disagree with CSWG’s assertion that, in the *Preliminary Determination*, the Department erred in calculating a surrogate value for B&H. First, CSWG has acknowledged, without reservation, that it incurred B&H charges.<sup>281</sup> Moreover, in CSWG’s latest U.S. sales database, submitted to the Department on June 1, 2012, the company included a field for B&H, acknowledging that it incurred such an expense. CSWG’s argument that it incurred only certain of the B&H charges reflected in the *Doing Business* publication was presented to the Department for the first time during the Department’s verification of CSWG, after the *Preliminary Determination*. Accordingly, the Department appropriately valued the company’s reported B&H in the *Preliminary Determination* based on the information available to it at that time.

We disagree with CSWG’s proposed method of dividing the fees for “customs clearance and technical control,” provided in the *Doing Business* publication, by the total shipping weight of the towers to derive the value of B&H per-kg. As the WTTC noted, CSWG appears to misunderstand the basis for calculating the surrogate value for B&H surrogate value, given the data source for such a value. The calculation of the surrogate value for B&H, based on the *Doing Business* publication, is for B&H charges, specific to a 20-foot container, involving (A) documentation preparation; (B) customs clearance and technical control; and (C) ports and terminal handling.<sup>282</sup> The Department’s method for calculating a surrogate value for B&H based on the referenced source is to divide the total B&H charges, specific to a 20-foot container, by the maximum cargo weight of such a container to arrive at the B&H charge per-kg that is then used, as a proxy, to value the weight of a tower. Therefore, contrary to CSWG’s argument, the

<sup>281</sup> See CSWG’s April 9, 2012, section C submission at C-25.

<sup>282</sup> See <http://www.foreign-trade.com/reference/ocean.cfm>.

fact that towers are not containerized is not relevant because the B&H charges used by the Department, while applicable to a 20-foot container, are allocated to the weight of the container in kgs, which is then applied to the weight of the tower. Moreover, since the B&H charges noted above are specific to a 20-foot container, it would be distortive to simply divide such charges directly by the weight of the towers shipped, as CSWG suggests, given the fact that the B&H charges are directly linked to the weight of a 20-foot container; not the weight of a tower. Furthermore, we note that the Department has used the *Doing Business* publication as a source for B&H surrogate values and applied the same methodology in calculating a surrogate value for B&H in several other proceedings.<sup>283</sup> Additionally, as noted above, there are no other surrogate values for B&H on the record of this investigation more specific to wind towers.

CSWG claims that it incurred charges for only customs clearance, maintaining that it did not incur either handling charges or charges relating to the preparation of export documentation. Based on the Department's findings during its verification of CSWG, we agree that the company did not incur handling charges. However, we disagree with CSWG's contention that it did not incur expenses relating to the preparation of export documentation, in addition to the charges it incurred for customs clearance. During verification, CSWG officials initially made the opposite claim, maintaining that the only charges incurred by CSWG were related to the preparation of export documentation, and that the company did not incur either customs clearance fees or ports & terminal handling charges. In fact, during the Department's verification of CSWG, company officials prepared and presented a chart for a proposed calculation of B&H charges, supporting the company's original claim that it incurred only expenses relating to the preparation of export documentation.<sup>284</sup> To determine whether the company did not incur B&H expenses, other than those relating to the preparation of export documentation, we examined the company's records and established that the company did indeed incur additional charges for customs clearance. We also found no evidence that the company incurred handling charges. These facts are also noted in the Department's Verification Report, in which we stated that:

During verification, company officials explained that CSWG incorrectly reported that it incurred brokerage and handling charges because the only expenses incurred were merely related to export documentation prepared by CS Wind Vietnam. They initially stated that the company did not incur charges for customs clearance or ports & terminal handling.<sup>285</sup>

Moreover, we noted that, upon reviewing the company's records, we established that the company did, in fact, incur expenses relating to customs declarations reported under a general expense account.<sup>286</sup> We also noted that we found no evidence showing that the company incurred handling charges involving its U.S. customers.<sup>287</sup>

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<sup>283</sup> See, e.g., *Preliminary Determination of Solar Cells from the PRC*, 77 FR at 31321, unchanged in *Solar Cells from the PRC*.

<sup>284</sup> See Verification Report at exhibit 22, page 1.

<sup>285</sup> *Id.*, at 24 and exhibit 22.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*, at 25.

Accordingly, we find that the facts on the record of this investigation support a finding that CSWG did indeed incur B&H charges relating to both documentation preparation and customs clearance. Therefore, for purposes of the final determination, we have recalculated the surrogate value for B&H based on the charges for documentation preparation and customs clearance provided in the *Doing Business* publication, following the same methodology used by the Department in the *Preliminary Determination*, as indicated above.

#### **Comment 12: Date of Sale**

##### *WTTC's Argument:*

- The Department's findings at verification indicate that the purchase order ("PO") date, not the commercial invoice date, is the appropriate date of sale for one of CSWG's U.S. customers.
- The Department's verification of CSWG indicates that, while the POs involving said customer are subject to change, the terms of sale with respect to the quantity and value, as well as the delivery date, are typically set by the time the commercial invoices are issued to this customer. Accordingly, for that customer, the date of sale is not the date of the commercial invoices, but rather the date of the PO.

##### *CSWG's Argument:*

- The WTTC acknowledges that selecting the date of the PO as the date of sale will have no impact in the instant investigation since the Department also found that during the POI the customer in question did not issue any POs to CSWG involving sales of wind towers destined for the United States.
- There is no dispute that material terms of sale are not set when the parties enter into their agreement. This agreement established the general conditions for future sales, and did not set quantities, prices, or even the physical specifications of the towers to be produced and sold.
- There is no commercial or accounting significance at all to this customer's POs and there is no way to reconcile the POs to actual payments, accounting records or financial statements. Moreover, based on the Department's verification findings, the POs are subject to change, contingent upon a change to the cost of materials or whether the order is withdrawn by the customer in question.
- The terms of sale, with respect to the quantity and value, as well as the delivery date, are typically set by the time the commercial invoices are issued to that customer.
- Further, for a given project, the customer in question issues a dozen or more different POs falling under different PO types. Accordingly, the commercial invoice date is the only viable date of sale for sales for the customer in question.
- Finally, the WTTC has not challenged the Department's decision that the commercial invoice date is the date of sale for CSWG's sales to another customer.

**Department's Position:** In the *Preliminary Determination*, in response to arguments raised by the WTTC regarding the use of the PO date or the shipment date as a basis for the date of sale, the Department stated that the "... date of sale is the date when the material terms of sale are

established and final--that is, no longer subject to change.”<sup>288</sup> The Department noted that, after examining information provided on the record of this investigation, it found that CSWG provided evidence that the terms of purchase orders can and do change up until issuance of the commercial invoice.<sup>289</sup> The Department further noted that record evidence “. . . does not suggest that the shipments of towers have occurred prior to the issuance of the commercial invoice to said customer to warrant the use of the shipment date as the date of sale.”<sup>290</sup> Moreover, the Department stated that “{a}fter examining the record, the Department has determined that there is insufficient evidence demonstrating that a date other than the commercial invoice date better reflects that date on which the material terms of sale were established.”<sup>291</sup>

Since the *Preliminary Determination*, the Department has conducted a verification of CSWG’s responses, and has established that the material terms of sales between CSWG and its customers are set when the commercial invoices are issued. In its Verification Report, the Department confirmed that the terms of POs are subject to change.<sup>292</sup> For one of CSWG’s customers, we noted that once the commercial invoices are issued, the terms of sale as to price and quantity are set. For another customer, the Department also noted that the material terms of sale are set when the commercial invoices are issued, noting that “. . . the terms of sale, with respect to the quantity and value, as well as the delivery date, are typically set by the time the commercial invoices are issued . . . .”<sup>293</sup>

The WTTC interprets the above-referenced statement to mean that the date of sale involving CSWG’s second customer is not the date of the commercial invoices, but rather the date of the PO. We disagree with the WTTC’s interpretation of the Department’s statement. The statement made by the Department simply intended to convey that the terms of the PO are subject to change and that the final material terms of sale are typically set when the commercial invoices are issued. We also note that in the Verification Report, in reference to the same customer, the Department further stated that “. . . the purchase orders are subject to change, contingent upon a change to the cost of materials or whether the order is withdrawn . . . .”<sup>294</sup>

Accordingly, we find no basis for the WTTC’s claim that the Department’s verification finding involving one of CSWG’s customers indicates that the terms of sale were set when the POs were issued by said customer. Moreover, as the WTTC and CSWG both acknowledged, this issue has no impact on this final determination in any event since no POs involving sales of towers destined to the United States were issued by CSWG’s other customers during the POI.

Moreover, we find the WTTC’s argument that the Department use the PO date as the date of sale in the first administrative review to be speculative at best, since the Department is not in a position to examine CSWG’s future selling practices.

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<sup>288</sup> See *Preliminary Determination*, 77 FR at 46064.

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> See Verification Report at 10-12.

<sup>293</sup> *Id.* at 12.

<sup>294</sup> *Id.* at 11.

## Comment 13: Free-of-Charge Inputs and Surrogate Financial Ratios

### *CSWG's Arguments*

- In the *Preliminary Determination*, the Department included the value of the free-of-charge ("FOC") inputs in the FOP calculation, to which it applied the surrogate overhead, SG&A, and profit ratios to determine the amounts for SG&A, overhead and profit. The Department then included the resulting overhead, SG&A and profit amounts in the calculation of NV. Nevertheless, when the Department adjusted the U.S. price for such FOC inputs, it added only the values of the FOC inputs, without including the surrogate SG&A, overhead, or profit amounts relating to such inputs.
- The inclusion of overhead, SG&A, and profit, calculated for the FOC inputs, in NV creates inequities when compared to a U.S. price which excludes the overhead, SG&A, and profit relating to such inputs.
- For the final determination, the Department should exclude the FOC inputs when applying the overhead, SG&A, and profit ratios to the FOPs for the purpose of calculating the NV. Otherwise, the Department should include the overhead, SG&A, and profit relating to the FOC inputs when calculating U.S. price.

### *The WTTC's Arguments*

- There is no basis in the law, regulations, or the Department's policies for the inclusion of factory overhead costs in the U.S. price calculation, as suggested by CSWG.
- By law, the Department is required to value all inputs, including inputs which the respondent claims were provided to it free-of-charge.
- To the extent that CSWG has demonstrated that the U.S. price does not reflect the cost of the FOC inputs, the Department nets these expenses out of the calculation by increasing the U.S. price by the same amount.
- Because the statute requires that the NV reflect all FOPs, this methodology is required to nullify the increase in NV that arises out of the inclusion of the surrogate values for those inputs. The net effect, intended by the Department, is to ensure that the inclusion of these values has no effect on the outcome of the margin. Including factory overhead costs would defeat this purpose.

**Department's Position:** We agree with the WTTC. Pursuant to section 773(c)(3) of the Act, when calculating the NV, the Department must include all FOPs utilized in producing the merchandise under consideration. The values of the FOC inputs, including any resulting amounts for SG&A, overhead, and profit relating to the production and sales of the merchandise under consideration, are part of the NV calculation. Given the fact that the statute requires that the NV reflect all FOPs, the Department's method of increasing the U.S. price by the value of the FOC inputs is intended to offset the increase in the NV due to the inclusion of the surrogate values for those FOC inputs.<sup>295</sup> CSWG argues that the inclusion of overhead, SG&A, and profit, relating to the FOC inputs, in NV creates inequities when compared to the U.S. price which

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<sup>295</sup> See, e.g., *Chlorinated Isocyanurates from the PRC (2005)* and accompanying IDM at Comment 10. See, also, *Chlorinated Isocyanurates from the PRC (2010)* and accompanying IDM at Comment 7(C).

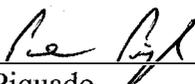
excludes the overhead, SG&A, and profit relating to such inputs. We disagree with CSWG's rationale because the U.S. price should already reflect the costs of SG&A and overhead. The U.S. price should also reflect an amount for profit realized by the company when selling the merchandise under consideration. Accordingly, adding to the U.S. price any amounts for SG&A, overhead, and profit relating to FOC inputs would double count the amounts of SG&A, overhead, and profit relating to the FOC inputs that should already be reflected in the U.S. price. Therefore, we find no basis for CSWG's above-referenced argument. For the reasons noted above, consistent with the *Preliminary Determination*, we continued to increase the U.S. price by the values of the FOC inputs only, as an adjustment to offset the inclusion of the values of such inputs in the NV.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

AGREE

DISAGREE

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

17 DECEMBER 2012  
Date

### Table of Shortened Citations

<i>Activated Carbon from the PRC</i>	<i>Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part</i> , 76 FR 23978 (April 29, 2011), unchanged in <i>Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review</i> , 76 FR 67134 (October 31, 2011).
AHSTA	<i>Ad Hoc Shrimp Trade Action Committee v United States</i> , 791 F. Supp. 2d 1327 (CIT 2011).
<i>Ass'n of Am. School Paper Suppliers</i>	<i>Ass'n of Am. School Paper Suppliers v. United States</i> , 32 CIT 1196 (2008).
<i>Bottom Mount Combination Refrigerator-Freezers from Korea</i>	<i>Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination</i> , 77 FR 17410 (March 26, 2012).
Candles from the PRC	<i>Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China</i> , 69 FR 12121 (March 15, 2004).
<i>Carbon Steel Plate from Romania</i>	<i>Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review</i> , 70 FR 12651 (March 15, 2005).
<i>Chlorinated Isocyanurates from the PRC (2005)</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China</i> , 70 FR 24502 (May 10, 2005).
<i>Chlorinated Isocyanurates from the PRC (2008)</i>	<i>Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review</i> , 73 FR 52645 (September 10, 2008).
<i>Citric Acid from the PRC</i>	<i>Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of the Second Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review</i> , 77 FR 33399, 33403 (June 6, 2012).
CMC II	<i>China Nat'l Mach. Imp. &amp; Exp. Corp. v. United States</i> , 293 F. Supp. 2d 1334 (Ct. Int'l Trade 2003), <i>aff'd</i> 104 Fed. Appx. 183 (Fed. Cir.

	2004).
<i>Color TVs from the PRC</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004).</i>
<i>Copper Pipe and Tube from the PRC</i>	<i>Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010).</i>
<i>CORE from Korea</i>	<i>Corrosion-Resistant Carbon Steel Flat Products from the People's Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009).</i>
<i>Crawfish from the PRC</i>	<i>Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002).</i>
<i>CTL Plate from India</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India (Part II), 64 FR 73131 (December 29, 1999).</i>
<i>CTL Plate from Indonesia</i>	<i>Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia, 70 FR 45692 (August 8, 2005).</i>
<i>CVP 23 from the PRC</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004)</i>
<i>Electrodes from the PRC (2009)</i>	<i>Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 FR 2049 (January 5, 2009).</i>
<i>Electrodes from the PRC (2011)</i>	<i>Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent To Rescind Administrative Review, in Part, 76 FR 12325, 12334 (March 7, 2011), unchanged in <i>Small Diameter Graphite Electrodes from the People's</i></i>

	<i>Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part</i> , 76 FR 56397 (September 13, 2011).
Final Analysis Memorandum	Memorandum to the File from Magd Zalok and LaVonne Clark, regarding “Analysis of the Final Determination Margin Calculation for CS Wind Group,” (December 17, 2012).
Final Surrogate Value Memorandum	Memorandum to the File from Magd Zalok and LaVonne Clark, regarding “Surrogate Values for the Final Determination,” (December 17, 2012).
<i>Fish Fillets from Vietnam</i>	<i>Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review</i> , 71 FR 14170 (March 21, 2006).
<i>FMC Corp.</i>	<i>FMC Corp. v. United States</i> , 27 CIT 240 (2003), <i>aff’d</i> 87 Fed. Appx. 753 (Fed. Cir. 2004).
<i>Fuyao II</i>	<i>Fuyao Glass Industry Group Co. v. United States</i> , 29 C.I.T. 109 (2005).
<i>Hand Trucks from the PRC</i>	<i>Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review</i> , 77 FR 41744 (July 16, 2012).
<i>HR Flat Products from India</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review</i> , 75 FR 43488 (July 26, 2010).
<i>HR Flat Products from Thailand</i>	<i>Final Results of Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand</i> , 66 FR 50410 (October 3, 2001)
<i>Initiation Notice</i>	<i>Utility Scale Wind Towers From the People’s Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations</i> , 77 FR 3440 (January 24, 2012).
<i>Jinan Yipin</i>	<i>Jinan Yipin Corp. v. United States</i> , 774 F. Supp. 2d 1238 (Ct. Int’l Trade 2011).
<i>Labor Methodologies</i>	<i>Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor</i> , 76 FR 36092 (June 21, 2011)
<i>Labor Methodologies Request for Comments</i>	<i>Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment</i> , 76 FR 9544 (February 18, 2011).

<i>Lined Paper Products from the PRC</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).</i>
<i>Malleable Pipe Fittings from the PRC</i>	<i>Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003)</i>
<i>Multilayered Wood Flooring from the PRC</i>	<i>Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011).</i>
<i>Mushrooms from the PRC</i>	<i>Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006).</i>
<i>Nails from the PRC</i>	<i>Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review, 77 FR 12556 (March 1, 2012).</i>
<i>Nation Ford</i>	<i>Nation Ford Chem. Co. v. United States, 166 F.3d 1373 (Fed. Cir. 1999).</i>
<i>NME Surrogate Selection Policy Bulletin</i>	<i>Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (website version available at <a href="http://ia.ita.doc.gov/policy/index.html">http://ia.ita.doc.gov/policy/index.html</a>).</i>
<i>OTCA 1988 House Conference Report</i>	<i>Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988).</i>
<i>Pencils from the PRC</i>	<i>Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406 (July 13, 2009).</i>
<i>PET Film from India</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007).</i>
<i>Petition</i>	<i>Petitions for the Imposition of Antidumping and Countervailing Duties on Utility Scale Wind Towers from the People's Republic of China and Antidumping Duties on Utility Scale Wind Towers from the Socialist Republic of Vietnam</i>

	(December 29, 2011).
<i>Preliminary Determination</i>	<i>Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination</i> , 77 FR 29315 (August 2, 2012).
<i>Preliminary Determination of Solar Cells from the PRC</i>	<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances</i> , 77 FR 31309 (May 25, 2012), unchanged in <i>Solar Cells from the PRC</i> .
Preliminary Surrogate Value Memorandum	Memorandum to the File from Magd Zalok and LaVonne Clark, regarding "Surrogate Values for the Preliminary Determination," (July 26, 2012).
<i>Ribbons from the PRC</i>	<i>Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 75 FR 41808 (July 19, 2010)
<i>Shrimp from the PRC (2012)</i>	<i>Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part</i> , 77 FR 53856 (September 4, 2012).
<i>Shrimp from the PRC (2011)</i>	<i>Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review</i> , 76 FR 51940 (August 19, 2011).
<i>Sichuan Changhong</i>	<i>Sichuan Changhong Elec. Co. v. United States</i> , 30 CIT 1481 (2006).
<i>Silicon Metal from Brazil</i>	<i>Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part</i> , 66 FR 11256 (February 23, 2001)
<i>Silicon Metal from the PRC</i>	<i>Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review</i> , 77 FR 54563 (September 5, 2012).
<i>Solar Cells from the PRC</i>	<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final</i>

	<i>Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part</i> , 77 FR 63791 (October 17, 2012).
<i>Steel Hangers from the PRC</i>	<i>Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 73 FR 47587 (August 14, 2008).
Surrogate Country Memorandum	Memorandum from Carol Showers, Director, Office of Policy, to Charles Riggle, Program Manager, Office 4, regarding "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Utility Scale Wind Towers ('Wind Towers') from the Socialist Republic of Vietnam ('Vietnam')" (January 27, 2012).
<i>Tapered Roller Bearings from the PRC (2001)</i>	<i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part</i> , 66 FR 1953 (January 10, 2001).
<i>Technoimportexport</i>	<i>Technoimportexport, UCF America Inc. v. United States</i> , 16 CIT 13 (1992).
<i>Temper</i>	<i>Temper v. United States</i> , 31 CIT 1303 (2007).
<i>Tianjin Magnesium</i>	<i>Tianjin Magnesium Int'l Co v. United States</i> , 722 F. Supp. 2d 1322 (Ct. Int'l Trade 2010).
Verification Report	Memorandum to the File from LaVonne Clark and Magd Zalok, regarding "Verification of CS Wind Corporation and CS Wind Vietnam Co., Ltd.'s responses in the Antidumping Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam" (September 21, 2012).
<i>Wooden Bedroom Furniture from the PRC</i>	<i>Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews</i> , 74 FR 41374 (August 17, 2009).
<i>Wuhan Bee Healthy</i>	<i>Wuhan Bee Healthy Co., Ltd. v. United States</i> , 29 CIT 1275 (2005).
<i>Zhejiang Machinery</i>	<i>Zhejiang Machinery Import &amp; Export Corp. v. United States</i> , 473 F. Supp. 2d 1365 (Ct. Int'l Trade 2007).