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DATE December 17, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *CPM 12/17/12*
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 People's Republic of China

SUMMARY

The Department of Commerce (the "Department") has analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty ("AD") investigation of utility scale wind towers ("wind towers") from the People's Republic of China ("PRC"). As a result of this analysis, we have made changes to the margins for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On August 2, 2012, the Department published its Preliminary Determination in the AD investigation of wind towers from the PRC.¹ The Department invited parties to comment on the Preliminary Determination. The Wind Tower Trade Coalition ("Petitioner"), Chengxi Shipyard Co., Ltd. ("CXs"), and Titan Wind Energy (Suzhou) Co., Ltd. ("Titan") submitted case briefs on October 2, 2012² and rebuttal briefs on October 9, 2012.³ On November 2, 2012, the Department held a public hearing.

¹ See Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 46034 (August 2, 2012) ("Preliminary Determination").

² See Letter from Petitioner to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Case Brief" ("Petitioner's Case Brief") (October 2, 2012); Letter from CXs to the Secretary of Commerce, "Utility Scale Wind Towers from the PRC: Case Brief of Chengxi Shipyard Co., Ltd." (October 2, 2012) ("CXs's Case Brief"); Letter from Titan to the Secretary of Commerce, "Utility Scale Wind Towers From The People's Republic of China; Case Brief" (October 2, 2012) ("Titan's Case Brief").



DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Continue to Use Ukraine as the Surrogate Country

Petitioner

- The Department's selection of Ukraine as the surrogate country in the Preliminary Determination was incorrect. In the final determination, the Department should select South Africa as the surrogate country because it is the best available source for surrogate values ("SVs") on the record.⁴ If the Department does not select South Africa, it should select Thailand as the surrogate country because it is the second best available source for SVs on the record.⁵ South Africa is a better choice than Thailand to serve as the surrogate country because South Africa is the only country with both production of merchandise identical to the merchandise under consideration and a well-developed wind industry.⁶
- Ukraine is not the most appropriate source for SVs because, unlike South Africa, which has a well-developed wind energy industry and a robust steel fabrication industry, and Thailand, which has a substantial domestic steel industry, Ukraine does not have any producers of merchandise identical and/or comparable to the merchandise under consideration.⁷
- The Department improperly elevated SV specificity above all other data considerations in selecting Ukraine as the surrogate country. In doing so, the Department ignored the glaring deficiencies in the Ukrainian data such as the lack of publicly available information and the unreliability of the data.⁸
- Neither a policy bulletin nor the Department's regulations elevate the degree of specificity above the Department's well-established preference to value all factors using a single source.⁹ Such an elevation leads to "cherry-picking" of SVs and, thereby, destroys all predictability and fairness in the investigation.¹⁰
- By mixing and matching SVs from different countries, the Department's calculations do not reflect as accurately as possible the production experience of the PRC respondents if they were producing the merchandise under consideration in the surrogate country.¹¹
- The record contains no reliable, publicly available financial statements of Ukrainian producers of merchandise comparable to the merchandise under consideration.¹²

³ See Letter from Petitioner to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Rebuttal Brief" ("Petitioner's Rebuttal Brief") (October 9, 2012); Letter from CXS to the Secretary of Commerce, "Utility Scale Wind Towers from the PRC: Case Brief of Chengxi Shipyard Co., Ltd." (October 9, 2012) ("CXS's Rebuttal Brief"); Letter from Titan to the Secretary of Commerce, "Utility Scale Wind Towers From The People's Republic of China; Rebuttal Brief" (October 9, 2012) ("Titan's Rebuttal Brief").

⁴ See Petitioner's Case Brief at 8-21.

⁵ Id. at 21-27.

⁶ Id. at 22.

⁷ Id. at 8-14, 21-22, 28-32.

⁸ See Petitioner's Case Brief at 5-8.

⁹ See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997) ("Sebacic Acid"), and accompanying Issues and Decision Memorandum at Comment 2; Antidumping Duties; Countervailing Duties, 62 FR 27296, 27366 (May 19, 1997); Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China, 57 FR 29705 (July 6, 1992).

¹⁰ See Petitioner's Case Brief at 7.

¹¹ Id. at 7-8.

¹² Id. at 33.

- Ukrainian SV data is unsuitable for use in this investigation due to: (1) the degree of state interference in Ukraine’s private sector; (2) rampant corruption at every level of the Ukrainian government; (3) the Ukrainian business practice of underreporting financial performance to avoid government harassment; (4) the lack of developed financial and regulatory institutions in Ukraine; and (5) the bleak business environment created by factors listed above.¹³
- The values of imported steel plate in Ukraine are distorted through unfair trade practices in both Ukraine and Russia, which is the source of the majority of Ukraine’s steel plate imports.¹⁴
- Ukraine does not provide the most specific source of steel plate SVs on the record. The Ukrainian tariff schedule, which was used to value steel plate in the Preliminary Determination, does not provide complete size designations and makes no reference to either steel grade or chemistry. Moreover, the fact that the Ukrainian tariff schedule provides unique tariff items for specific sizes of steel plate is irrelevant because steel plate is purchased by weight and, therefore, the dimensions of the steel plate do not have a significant effect on the price.¹⁵
- Only the South African price lists and the Thai import data on the record provide steel plate values specific to the grades of steel plate used by CXS and Titan.¹⁶ The Department has previously recognized that steel chemistry is critical to accurately value steel inputs.¹⁷
- CXS’s and Titan’s mill test certificates confirm that both companies use specialized steel plate that is stronger than standard carbon steel while remaining highly weldable. Due to these unique characteristics, the steel plate used by CXS and Titan is more expensive than standard commodity structural steel plate. As a result, the ability to specifically value the precise steel chemistry or grade of the steel plate is critical to the Department’s effort to accurately capture the costs associated with producing the merchandise under consideration.¹⁸
- The best available source to value steel plate is the South African steel plate price lists, which satisfy all the elements the Department normally considers when selecting SVs.¹⁹
- The Department has previously declined to use import statistics in favor of a price list that was publicly available on a website, contemporaneous with the period of investigation (“POI”), specific to the merchandise under consideration, and representative of a broad market average.²⁰ Moreover, the Department has used a price list as a source for SVs despite there being no indication that sales were made from the price list.²¹

¹³ Id. at 34-36.

¹⁴ Id. at 34.

¹⁵ Id. at 36-44.

¹⁶ Id. at 16-18, 36-44.

¹⁷ See High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 26739 (May 7, 2012) (“Steel Cylinders”), and accompanying Issues and Decision Memorandum at Comment 1; Petitioner’s Case Brief at 24, 40.

¹⁸ See Petitioner’s Case Brief at 37-40.

¹⁹ Id. at 18-21.

²⁰ See Electrolytic Manganese Dioxide From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) (“Electrolytic Manganese Dioxide”), and accompanying Issues and Decision Memorandum at Comment 2; Petitioner’s Case Brief at 18-19.

²¹ See Electrolytic Manganese Dioxide, and accompanying Issues and Decision Memorandum at Comment 2; Petitioner’s Case Brief at 19.

- If the Department declines to use the South African price lists to value steel plate, the Department should, as a first alternative, value steel plate using South African import data for both carbon steel plate and alloy steel plate.²²
- If the Department determines that South Africa is not an appropriate source of SVs, the Department should value steel plate using Thai import data because it is more specific to both steel chemistry and plate size than the Ukrainian import data. Specifically, the Thai import data captures four different carbon content ranges and several different width and thickness ranges.²³

CXS

- The Department correctly chose Ukraine as the surrogate country in the Preliminary Determination.²⁴
- Information on the record indicates that Ukrainian companies market themselves as wind tower producers. In fact, Ukraine's installed capacity for wind tower production is far greater than the installed capacity in South Africa and Thailand. Moreover, Ukraine's quantity and value of wind tower exports far exceeds those of South Africa and Thailand.²⁵
- AD actions against Russia and Ukraine in third-countries do not suggest that domestic prices in those countries are distorted. Rather, this suggests that Russian and Ukrainian domestic prices are higher than their export prices and, therefore, the SVs are distorted upward.²⁶
- The Department may exercise its broad discretion in SV selection to balance the various factors used to assess the quality of the surrogate data.²⁷
- The Department should continue to exclude the South African price lists as a source of SVs for steel plate. Non-public, privately obtained price lists should not be used when import data that are product specific, representative of a broad market average, tax-exclusive, contemporaneous with the POI, and publicly available are on the record. The record of this case, unlike the record in Electrolytic Manganese Dioxide, contains import data that meet these criteria (i.e., Ukrainian import data).²⁸
- Petitioner's private email correspondence between its lawyers and certain company sales personnel should not be considered by the Department because it is non-public, unverifiable, and non-credible. The Department has previously rejected similar emails between a petitioner or its lawyer and a private person purporting to have information about pricing.²⁹

Titan

- The Department should continue to use Ukraine as its surrogate country in the final determination.³⁰

²² See Petitioner's Case Brief at 21.

²³ Id. at 21-27.

²⁴ See CXS's Rebuttal Brief at 2-13.

²⁵ Id. at 8-9.

²⁶ Id. at 9-10.

²⁷ Id. at 4-6.

²⁸ Id. at 12-13; Electrolytic Manganese Dioxide, and accompanying Issues and Decision Memorandum at Comment 2.

²⁹ See Pure Magnesium From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 76945 (December 9, 2011), and accompanying Issues and Decision Memorandum at Comment 13; CXS's Rebuttal Brief at 13.

³⁰ See Titan's Rebuttal Brief at 8-11.

- Ukraine is a producer of merchandise comparable to the merchandise under consideration. While there is evidence on the record that both Ukraine and South Africa have robust steel industries, only Ukraine produced wind towers during the POI. Petitioner’s claim that South Africa is a significant producer of wind towers is based on plans of several South African companies to develop wind tower production in the future.³¹
- Petitioner’s contention that Ukrainian financial data is unsuitable is irrelevant because the Department did not use such information in the Preliminary Determination and no party has argued for its use.³²
- Any evidence that Ukraine’s steel export prices are distorted is irrelevant because (1) the Department relied on Ukraine’s import data in the Preliminary Determination and in previous cases³³ and (2) the Department has previously rejected arguments that Russia’s involvement in Ukraine’s steel industry makes Ukraine an unsuitable source for SVs.³⁴ Moreover, Petitioner has not offered any factual support for its contention that Ukrainian companies underreport customs information.³⁵
- Petitioner’s claim that it is the Department’s practice to obtain all SVs from one country is incorrect. In fact, the Department often uses SVs from more than one country.³⁶ This is clearly permitted by section 773(c)(4) of the Tariff Act of 1930, as amended (the “Act”), which states that “the administering authority...shall utilize, to the extent possible,...prices...in one or more market economy countries.”³⁷
- The Department has the discretion to weigh available information with respect to each input value and make product-specific and case specific decisions in selecting SVs.³⁸ In this instance, the Department correctly balanced the relative importance of the various factors and selected Ukraine given the advantages of its more specific tariff schedule.³⁹
- Ukraine provides the best available information to value the steel plate used by Titan.⁴⁰
- While the South African tariff schedule only contains tariff sub-headings for steel at the six-digit level, the Ukrainian tariff schedule further divides steel at the eight-digit level based on the steel’s width and thickness. By excluding steel that may be much thicker or wider from the import data, the Ukrainian import data provide surrogate pricing information that is specific to the steel used by Titan.⁴¹

³¹ Id. at 8-10.

³² Id. at 9-10.

³³ See Steel Cylinders, and accompanying Issues and Decision Memorandum at Comment 1; Small Diameter Graphite Electrodes From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review, 77 FR 40854 (July 11, 2012) (“Graphite Electrodes”), and accompanying Issues and Decision Memorandum at Comment 3; Titan’s Rebuttal Brief at 9-10.

³⁴ See Steel Cylinders, and accompanying Issues and Decision Memorandum at Comment 1; Titan’s Rebuttal Brief at 9.

³⁵ See Titan’s Rebuttal Brief at 10.

³⁶ See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People’s Republic of China, 57 FR 29705, 29707 (July 6, 1992); Titan’s Rebuttal Brief at 10-11.

³⁷ See Titan’s Rebuttal Brief at 10.

³⁸ See 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) (“Steel Nails”), and accompanying Issues and Decision Memorandum at Comment 3; Titan’s Rebuttal Brief at 12.

³⁹ See Titan’s Rebuttal Brief at 12.

⁴⁰ Id. at 9, 11-16.

⁴¹ Id. at 12-13.

- The size of the steel plate significantly affects the price of the steel plate. This is evident in the average unit values (“AUVs”) derived from the Ukrainian import data, which varied between \$0.78/kilogram (“kg”) and \$0.99/kg depending on the size of the steel plate.⁴²
- The Department prefers to use data from actual transactions and, therefore, should not use the South African price lists submitted by Petitioner, which represent only offers for sale and not actual commercial transactions.⁴³ In cases where the Department has used non-transactional data, there have been special circumstances that do not apply to the present investigation. For example, in Electrolytic Manganese Dioxide, the Department chose a price list over import data because the import data indicated that the single country from which the input was being imported did not produce the input in question.⁴⁴ Similarly, in Steel Nails, the Department chose a price list because the import data came from a large basket category that included products that were not considered subject merchandise.⁴⁵
- There is no evidence on the record that supports averaging the AUVs for alloy steel and non-alloy steel in order to derive a SV for the steel plate used by Titan.⁴⁶
- The information currently on the record and verified by the Department does not allow for steel to be classified according to the Thai tariff schedule. Titan’s steel plate is currently classified according to the size specifications provided by the Ukrainian tariff schedule. The specifications provided by that schedule do not overlap with the specifications provided by the Thai tariff schedule. Moreover, there is limited record evidence on the amount of carbon in the steel used by Titan.⁴⁷

Department’s Position:

In accordance with section 773(c) of the Act and 19 CFR 351.408(c), the Department has selected Thailand as the surrogate country for the final determination because Thailand is (1) at a level of economic development comparable to the PRC and (2) a significant producer of merchandise comparable to the merchandise under consideration. Moreover, the Department has determined that Thailand offers the best available SV data.

When the Department is investigating imports from a non-market economy (“NME”), section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer’s factors of production (“FOPs”) valued using the best available information in a surrogate market economy (“ME”) country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using “to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.”

⁴² Id.

⁴³ See Drill Pipe From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 76 FR 1966 (January 11, 2011), and accompanying Issues and Decision Memorandum at Comment 7; Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1376 (Ct. Int’l Trade 2010); Titan’s Rebuttal Brief at 14.

⁴⁴ See Electrolytic Manganese Dioxide, and accompanying Issues and Decision Memorandum at Comment 2; Titan’s Rebuttal Brief at 14-15.

⁴⁵ See Steel Nails, and accompanying Issues and Decision Memorandum at Comment 2; Titan’s Rebuttal Brief at 15.

⁴⁶ See Titan’s Rebuttal Brief at 15-16.

⁴⁷ Id. at 13-14.

Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single country.

On March 2, 2004, the Department issued Policy Bulletin 04.1 describing its practice regarding the selection of surrogate ME countries in NME cases.⁴⁸ As discussed below, the Department has followed the practice outlined in Policy Bulletin 04.1 in selecting the surrogate country in this proceeding.

Economic Comparability

The Department's practice, as reflected in Policy Bulletin 04.1, is to follow the procedure described below for identifying countries that are at a level of economic development comparable to that of the NME country.

First, early in a proceeding, the operations team sends the Office of Policy ("OP") a written request for a list of potential surrogate countries. In response, OP provides a list of potential surrogate countries that are at a comparable level of economic development to the NME country. OP determines economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of World Development Report (The World Bank). The surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability.⁴⁹

Consistent with this practice, on January 25, 2012, the Department requested that the OP provide a list of potential surrogate countries for this investigation.⁵⁰ On January 27, 2012, the OP issued a memorandum identifying seven countries as being at a level of economic development comparable to the PRC during the POI.⁵¹ The OP determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are each at a level of economic development, as measured by gross national income, comparable to that of the PRC.⁵²

In the Preliminary Determination, the Department determined that all seven countries listed in the Policy Memorandum are considered equally comparable to the PRC in terms of economic development and, therefore, satisfy the first criterion of section 773(c)(4) of the Act.⁵³ No parties submitted comments disputing the economic comparability to the PRC of any of the countries listed in the Policy Memorandum. Additionally, no record evidence contradicts the

⁴⁸ See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin 04.1").

⁴⁹ Id.

⁵⁰ See Memorandum from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Carole Showers, Director, Office of Policy, "Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Selection of Surrogate Countries" (January 25, 2012).

⁵¹ See Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Utility Scale Wind Towers, from the People's Republic of China" (January 27, 2012) ("Policy Memorandum").

⁵² Id.

⁵³ See Memorandum from Trisha Tran and Shawn Higgins, International Trade Compliance Analysts, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Selection of a Surrogate Country" (July 26, 2012) ("Surrogate Country Memorandum") at 9; Preliminary Determination, 77 FR at 46036.

Department's finding in the Preliminary Determination that all seven countries are economically comparable to the PRC. Therefore, for the final determination, the Department continues to consider each of the seven countries listed in the Policy Memorandum to be economically comparable to the PRC.

Significant Producer of Comparable Merchandise

The Department's practice, as reflected in Policy Bulletin 04.1, is to follow the procedures described below regarding the identification of comparable merchandise:

'{C}omparable merchandise' is not defined in the statute or the regulations, since it is best determined on a case-by-case basis. Even so, there are some basic rules that every team should follow. In all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. In cases where identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced.⁵⁴

With respect to whether a country is a significant producer of comparable merchandise, the Department's practice, as stated in Policy Bulletin 04.1, is to consider the following:

The extent to which a country is a significant producer should not be judged against the NME country's production level or the comparative production of the five or six countries on OP's surrogate country list. Instead, a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics). Since these characteristics are specific to the merchandise in question, the standard for 'significant producer' will vary from case to case.⁵⁵

Consistent with this practice, the Department sought evidence of production of wind towers by the countries listed in the Policy Memorandum in the form of export data, under the assumption that exporters of wind towers are also significant producers.⁵⁶ The Surrogate Country Memorandum contains export data from 2011 Global Trade Atlas ("GTA") for the Philippines, Indonesia, Ukraine, Thailand, Colombia, Peru, and South Africa for the six-digit Harmonized Tariff Schedule ("HTS") sub-categories listed in the description of the scope of this investigation (i.e., 7308.20 and 8502.31). The Department selected export data under these two HTS sub-categories because it found that merchandise that falls under these two HTS sub-categories are sufficiently comparable to wind towers.⁵⁷ For the reasons explained in Preliminary Determination and as evidenced by the Surrogate Country Memorandum, the Department

⁵⁴ See Policy Bulletin 04.1.

⁵⁵ Id.

⁵⁶ While the Department may compare production quantities of the merchandise under consideration from each potential surrogate country in relation to world production, the Department's review of the record did not reveal production quantities of wind towers from each potential surrogate country. Therefore, the Department was unable to obtain the wind tower production quantities of potential surrogate countries in comparison to the world wind tower production quantity. As a result, the Department sought evidence of production of wind towers by those countries in the form of export data. See Surrogate Country Memorandum at 6.

⁵⁷ HTS 7308.20 contains "Towers and Lattice Masts of Iron or Steel" and HTS 8502.31 contains "Generating Sets, Electric, Wind-Powered."

continues to find that record evidence demonstrates that South Africa, Ukraine, Indonesia, Thailand, Colombia, and Peru are significant producers of comparable merchandise under the relevant HTS sub-categories and that the Philippines is not a significant producer of comparable merchandise under the relevant HTS sub-categories.

Petitioner contends that while the GTA export data for HTS sub-categories 7308.20 and 8502.31 may indicate some degree of production of comparable merchandise, these HTS sub-categories are basket categories that cover numerous types of products such as lattice masts, light poles, and electrical generators that are not necessarily “comparable.”⁵⁸ According to Petitioner, this merchandise is not comparable because large overhead cranes, heavy plate rolling equipment, or sophisticated submerged arc welders are not employed in its production.⁵⁹ The Department, however, disagrees with Petitioner that lattice masts, light poles, and electrical generators are not comparable to wind towers. Rather, the Department considers these products to be comparable merchandise for the purpose of surrogate country selection because of the similar materials and production capacities required to produce these products. The statute does not define “comparable merchandise” and the relevant legislative history provides evidence of Congress’s intent to allow the agency to select from a wide category of merchandise in identifying comparable merchandise.⁶⁰ Thus, to impose a requirement that merchandise must be produced by the exact same process and equipment to be considered comparable would be contrary to the intent of the statute.⁶¹ Therefore, for the final determination, the Department continues to find that that merchandise that falls under these two HTS categories are sufficiently comparable to wind towers. Accordingly, the Department has determined that Colombia, Indonesia, Peru, South Africa, Thailand, and Ukraine are significant producers of comparable merchandise under the relevant HTS sub-categories, while the Philippines is not a significant producer of comparable merchandise under these HTS sub-categories.⁶²

Moreover, after reviewing the record of this investigation, the Department has concluded that the information on the record does not support Petitioner’s claim that South Africa is both a producer of merchandise identical to the merchandise under consideration and home to a well-developed wind industry. Specifically, the Department has found that record evidence indicates future and anticipated, rather than actual, wind tower production in South Africa during the POI. Petitioner cited to two articles dated after the POI (*i.e.*, October 31, 2011 and May 9, 2012) to demonstrate that South Africa produces wind towers.⁶³ According to the October 31, 2011 article, a South African company “will manufacture” utility scale wind towers. Additionally, according to the May 9, 2012 article, a different South African company announced plans to open a factory near Cape Town, South Africa and “expects” to produce at least 200 wind towers annually.⁶⁴ According to both articles, there is expected production of wind towers in South Africa after the POI; however, there is no record evidence of actual production of wind towers in

⁵⁸ See Petitioner’s Case Brief at 29-30.

⁵⁹ *Id.* at 30.

⁶⁰ See Omnibus Trade and Competitiveness Act of 1988, H.R. REP. No. 576, 100th Cong., 2d Sess. 590 (1988) (Conf. Rep.) reprinted in 1988 U.S.C.C.A.N. 1547.

⁶¹ See *Sebacic Acid*, 62 FR at 65676.

⁶² See Surrogate Country Memorandum at Attachment 2.

⁶³ See Letter from Petitioner to the Secretary of Commerce, “Utility Scale Wind Towers from the People’s Republic of China: Petitioner’s Pre-Preliminary Comments” (June 29, 2012) (“Petitioner’s Pre-Preliminary Comments”) at Exhibits 1, 3.

⁶⁴ *Id.* at 11, Exhibit 1.

South Africa during the POI. Accordingly, Petitioner's claim that South Africa is a producer of identical merchandise is not supported by record evidence.

The Department further disagrees with Petitioner's claim that Ukraine is a not producer of merchandise identical or comparable to the merchandise under consideration. Evidence on the record indicates that Ukraine is a producer of merchandise identical to the merchandise under consideration. Specifically, the website of the Ukrainian Wind Energy Association states that "{s}ince June 2003, the Belgian-built Turbowinds 600 kW turbines have also been assembled in Ukraine, with towers and blades manufactured locally."⁶⁵ Consistent with Policy Bulletin 04.1, which states that countries that produce identical merchandise qualify as producers of comparable merchandise, the Department has determined that Ukraine qualifies as a producer of comparable merchandise.

For the reasons above, the Department continues to find that Colombia, Indonesia, Peru, South Africa, Thailand, and Ukraine are significant producers of merchandise comparable to the merchandise under consideration.

Data Considerations

When the Department finds that there is more than one country that is at a level of economic development comparable to that of the NME country and is a significant producer of comparable merchandise, the Department will consider the availability of the SV data. This practice is reflected in Policy Bulletin 04.1, which states:

{I}f more than one country has survived the selection process to this point, the country with the best factors data is selected as the surrogate country. Even if no issues arise regarding economic comparability and significant production, data quality is a critical consideration affecting surrogate country selection. After all, a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable. Limited data availability sometimes is the reason why the team will "go off" the OP list in search of a viable primary surrogate country.

In assessing data and data sources, it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.

Further, it is the Department's preference, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.⁶⁶

⁶⁵ See Letter from CS Wind China Co., Ltd. and CS Wind Corporation to the Secretary of Commerce, "CS Wind's Surrogate Country Comments: Antidumping Duty Investigation on Utility Scale Wind Towers from the People's Republic of China" (April 25, 2012) at Exhibit 7.

⁶⁶ See, e.g., 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

After examining the SV data on the record, the Department has determined, for the reasons below, that Thailand provides the best available SV data. In the Preliminary Determination, the Department selected Ukraine as the surrogate country because, all else being equal, Ukraine offered the best available SV data. In particular, Ukraine offered more specific SV data for many FOPs, including the respondents' primary input (i.e., steel plate).⁶⁷ After the Preliminary Determination, parties submitted Thai SV information, including Thai financial statements.⁶⁸ After carefully reviewing and weighing the data submitted after the Preliminary Determination, the Department has found that every raw material, labor, energy, and transportation FOP, with only minor exceptions, may be valued using Thai data that are publicly-available, contemporaneous with the POI, tax- and duty-free, and reflect a broad market average.⁶⁹ Further, as noted in the Final Determination SV Memorandum, which the Department hereby incorporates as part of this decision memorandum, the Department has also found that Thai import data allows the Department to value each respondent's steel plate, which accounts for a significant portion of each company's normal value, more accurately than either the South African or Ukrainian data because the Thai data is most specific to the size and chemistry of the respondents' steel plate. Specifically, the Thai tariff schedule classifies imports into four carbon content ranges and three width ranges.⁷⁰ In contrast, the South African and Ukrainian tariff schedules do not classify steel plate imports by levels of carbon content and the South African tariff schedule provides only a single tariff item for non-alloy steel plate in excess of 10 mm.⁷¹ Given that steel plate is one of the primary inputs which drive the Department's normal value calculations, the specificity and accuracy of the Thai tariff schedule with respect to the tariff items for steel plate is a reasonable basis to favor Thailand over South Africa and Ukraine because the Department can calculate the most accurate normal value by using Thai import data.⁷² Finally, unlike Ukraine, Thailand offers publicly-available financial statements from a producer of identical merchandise.⁷³ Therefore, consistent with its preference to value the FOPs

Revoke in Part, 77 FR 53856 (September 4, 2012) ("Frozen Shrimp"), and accompanying Issues and Decision Memorandum at Comment 10.

⁶⁷ See Surrogate Country Memorandum at 9-10.

⁶⁸ See Letter from Petitioner to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Final Results Surrogate Values Submission" (September 14, 2012) ("Petitioner's Post-Preliminary Determination SV Submission"); Letter from CXS to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Chengxi Shipyard Co., Ltd. Rebuttal to Post-Preliminary Surrogate Value Submission" (September 24, 2012); Letter from Titan to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Titan's Rebuttal Surrogate Values Submission" (September 24, 2012) ("Titan's Post-Preliminary Determination Rebuttal SV Submission").

⁶⁹ See Memorandum from Lilit Astvatsatrian, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Final Determination Surrogate Value Memorandum" (December 17, 2012) ("Final Determination SV Memorandum").

⁷⁰ See Petitioner's Post-Preliminary Determination SV Submission at Exhibit 1; Final Determination SV Memorandum at Attachments 1, 2.

⁷¹ See Memorandum from Lilit Astvatsatrian and Trisha Tran, International Trade Compliance Analysts, AD/CVD Operations, Office 4, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Surrogate Value Memorandum" (July 26, 2012) at 3.

⁷² See Steel Cylinders, and accompanying Issues and Decision Memorandum at Comment 1.

⁷³ See infra Issue 2; Letter from CXS to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Post-Preliminary Surrogate Value Submission of Chengxi Shipyard Co., Ltd." (September 14, 2012) ("CXs's Post-Preliminary Determination SV Submission") at Exhibit 5.

in single surrogate country, the Department may use the Thai financial statements on the record to calculate surrogate financial ratios from the same country as the other SVs.

The Department has also found that Titan's arguments against the use of Thai data are not supported by the information on the record. Titan argues that the Thai tariff schedule is not useable because (1) the information currently on the record, and verified by the Department, does not allow for the classification of steel according to the Thai tariff schedule and (2) there is limited record evidence regarding the amount of carbon in the steel used by Titan. However, after examining the cost reconciliations for steel plate, purchase orders, mill certificates, inspection reports, and technical specifications currently on the record, the Department has found that sufficient information is on the record to classify Titan's steel plate according to the Thai tariff schedule.⁷⁴ For further information regarding Titan's steel plate, see Titan's Final Determination Analysis Memorandum.⁷⁵

Further, the Department continues to find that the South African price lists are not the best available information to value steel plate. When selecting a SV, the Department "attempts to find the most representative and least distortive market-based value because the more-broad based the value, the greater the likelihood that the value is representative."⁷⁶ When compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.⁷⁷ For these reasons, the Department prefers country-wide average prices reflecting numerous transactions between many buyers and sellers over prices from individual companies or cooperatives.⁷⁸ Moreover, the Department generally does not use price lists to value FOPs because (1) these prices often represent a starting point in a negotiation that could result in a significantly different final sale price and (2) price lists reflect the experience of a single producer rather than a broad market average.⁷⁹ In the Preliminary Determination, the Department found that South Africa's domestic price lists do not represent the best available data because: (1) there is no evidence that any sales were made from the price list; (2) the price lists include a disclaimer that they are "subject to change without prior notification"; and (3) the price lists are not broad market averages.⁸⁰ After re-examining the record before the final

⁷⁴ See Memorandum from Thomas Martin and Lilit Astvatsatrian, Senior International Trade Compliance Analysts, Office 4, to the File, "Verification of the Sales and Factors Responses of Titan Wind Energy (Suzhou) Co., Ltd. in the Antidumping Investigation of Utility Scale Wind Towers from the People's Republic of China" (September 21, 2012) ("Titan's Verification Report") at Exhibits 12a, 20c, 22.

⁷⁵ See Memorandum from Thomas Martin and Lilit Astvatsatrian, Senior International Trade Compliance Analysts, AD/CVD Operations, Office 4, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4 "Utility Scale Wind Towers from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Titan Wind Energy (Suzhou) Ltd." (December 17, 2012) ("Titan's Final Determination Analysis Memorandum") at 3, Attachment III.

⁷⁶ See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008), and accompanying Issues and Decision Memorandum at Comment 4.

⁷⁷ See Antidumping Duties; Countervailing Duties, 62 FR at 27366.

⁷⁸ See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

⁷⁹ See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 42301 (July 22, 2005), and accompanying Issues and Decision Memorandum at Comment 2; Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1376 (Ct. Int'l Trade 2010).

⁸⁰ See Surrogate Country Memorandum at 8.

determination, the Department continues to find there is no evidence that Aveng Trident Steel's price lists reflect prices from actual transactions. While Aveng Trident Steel's sales manager states that "these prices accurately reflect price changes" in the month they are published, record evidence does not demonstrate that these price lists are completed transactional prices and that the final prices did not vary from the listed prices.⁸¹ Moreover, the Department also continues to find that Aveng Trident Steel's price lists provide data for only a single producer in South Africa for four different locations in South Africa. Therefore, Aveng Trident Steel's price lists are less representative and inferior to the Thai import data because the price lists are regional rather than national data. Additionally, the record does not support Petitioner's claim that these prices are typical across South African producers. Petitioner relies on a chain of email correspondence between an attorney and Aveng Trident Steel's sales director to support this contention.⁸² These emails, however, contain no explanation regarding how the sales director determined that these prices are broadly reflective of monthly steel prices. Moreover, the Department also disagrees with Petitioner that the facts of this case are similar to those of past cases in which the Department chose to use price lists (i.e., Steel Nails and Electrolytic Manganese Dioxide). As explained above, the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are publicly-available, product-specific, representative of a broad-market average, tax-exclusive, and contemporaneous with the POI. In Electrolytic Manganese Dioxide, the Department selected a price list over import data because the import data did not meet all of the SV selection criteria.⁸³ Likewise, in Steel Nails, the Department selected a price list because the import data was not specific to the input consumed by the respondents.⁸⁴ Electrolytic Manganese Dioxide and Steel Nails are not instructive in this investigation because Thai steel plate data meets all of the SV selection criteria and the Thai tariff items used to value steel plate are specific to the respondents' inputs. Therefore, the unique exceptions that permitted the Department to select price lists as the best available information in Electrolytic Manganese Dioxide and Steel Nails are not present in this investigation. For these reasons, the South African price lists are not the best available information to value steel plate.

For the reasons explained above, the Department has determined that Thailand, in addition to being at a level of economic development comparable to that of the PRC and a significant producer of merchandise comparable to wind towers, offers the best available SV information on the record of this investigation. Therefore, in accordance with section 773(c) of the Act and 19 CFR 351.408(c), the Department has selected Thailand as the surrogate country for the final determination.

Comment 2: Whether the Department Should Revise its Financial Ratio Calculations

In the Preliminary Determination, the Department valued selling, general, and administrative ("SG&A") expenses, overhead, and profit using financial statements from Mazor Group Limited ("Mazor Group"), a South African producer of merchandise comparable to wind towers.⁸⁵ After the Preliminary Determination, CXS submitted financial statements from Thailand (i.e., Master

⁸¹ See Petitioner's Pre-Preliminary Comments at Exhibit 2.

⁸² Id.

⁸³ See Electrolytic Manganese Dioxide, and accompanying Issues and Decision Memorandum at Comment 2.

⁸⁴ See Steel Nails, and accompanying Issues and Decision Memorandum at Comment 3.

⁸⁵ See Preliminary Determination, 77 FR at 46042.

Tower & Equipment Co., Ltd. (“Master Tower”))⁸⁶ and Petitioner submitted financial statements from the Philippines (i.e., EEI Corporation), South Africa (i.e., Argent Group, Basil Read, and Racee Group), and Thailand (i.e., Asian Marine Services Public Company Limited (“Asian Marine”)).⁸⁷ All of the financial statements submitted were from time periods contemporaneous with the POI.

Petitioner

- The Department’s use of Mazor Group’s financial statements to calculate the surrogate financial ratios in the Preliminary Determination was appropriate because Mazor Group is a South African producer of merchandise comparable to the merchandise under consideration and its financial statements are contemporaneous with the POI.⁸⁸
- Asian Marine’s financial statements are appropriate for use in the calculation of the surrogate financial ratios because Asian Marine is a heavy industrial steel fabricator that uses machinery similar to that used by the respondents.⁸⁹
- EEI Corporation’s financial statements are appropriate for use in the calculation of the surrogate financial ratios because EEI Corporation is engaged in the installation, construction, and erection of power generating and transmission facilities, oil refineries, and various industrial plants. Similar to CXS, EEI Corporation has a marine division which engages in steel fabrication.⁹⁰
- Argent Group’s financial statements are appropriate for use in the calculation of the surrogate financial ratios because Argent Group includes numerous companies that add value to steel via fabrication or service centers.⁹¹
- Racee Group’s financial statements are appropriate for use in the calculation of the surrogate financial ratios because Racee Group is a heavy engineering group that includes companies that concentrate on the construction and maintenance of railways.⁹²
- Basil Read’s financial statements are appropriate for use in the calculation of the surrogate financial ratios because Basil Read’s activities include the construction of bridges, pipelines, infrastructure, harbors, industrial plants, and sports facilities. The financial statements of Basil Read are the most appropriate financial statements on the record because Basil Read is also engaged in the South African wind industry.⁹³
- In the event that Thailand or Ukraine is selected as the surrogate country, the Department should rely on the financial statements of one, or a combination of, the Philippine, South African, and Thai heavy industry steel fabricators on the record to calculate the surrogate financial ratios.⁹⁴
- If the Department continues to use Mazor Group’s financial statements for the final determination, the Department should make several adjustments to its financial ratio calculations. First, the Department should treat “Trading interest income” and “Trading interest paid” in Mazor Group’s financial statement as “Traded/finished goods” or,

⁸⁶ See CXS’s Post-Preliminary Determination SV Submission at Exhibit 5.

⁸⁷ See Petitioner’s Post-Preliminary Determination SV Submission at Exhibits 3-8.

⁸⁸ See Petitioner’s Case Brief at 45-46.

⁸⁹ Id. at 47.

⁹⁰ Id.

⁹¹ Id.

⁹² Id. at 47-48.

⁹³ Id. at 48-49.

⁹⁴ Id. at 49.

alternatively, exclude these items from the calculation of the surrogate financial ratios.⁹⁵ Second, the Department should ensure that all line items that are assigned to “Labor” or “Overhead” are included in the cost of sales.⁹⁶ Third, the Department should treat all labor-related expenses, except “Wages and salaries,” as SG&A expenses.⁹⁷ Fourth, the Department should treat both depreciation on motor vehicles and motor vehicle expenses as overhead expenses.⁹⁸ Fifth, consistent with its practice, the Department should exclude interest income from its calculations because there is no evidence that Mazor Group’s interest income was generated by short-term assets.⁹⁹

- Master Tower is not an appropriate surrogate producer because Master Tower is part of the Master Group, which includes a company (*i.e.*, Master Power) that received countervailable subsidies from the Thai Board of Investment (“BOI”). Moreover, Master Tower, which produces lattice towers and monopoles for small wind, telecom, and power transmission industries, is not a producer of merchandise identical or comparable to the merchandise under consideration.¹⁰⁰

CXS

- The Department should use Master Tower’s financial statements to calculate the surrogate financial ratios because Master Tower’s financial statements are the only financial statements on the record from a producer of merchandise identical or comparable to the merchandise under consideration.¹⁰¹
- The Department should not use the financial statements proposed by Petitioner because none of these financial statements are from companies that produce merchandise as similar to the merchandise under consideration as the merchandise produced by Master Tower.¹⁰²
- If the Department continues to rely on Mazor Group’s financial statements in the final determination, it should not adjust the financial ratio calculations in the manner suggested by Petitioner.¹⁰³

Titan

- The Department should use only Master Tower’s financial statements to calculate the surrogate financial ratios because Master Tower’s financial statements are the only financial statements on the record from a producer of merchandise identical to the merchandise under consideration.¹⁰⁴ The Department has found that surrogate financial ratios based on financial statements from producers of merchandise identical to the merchandise under consideration

⁹⁵ *Id.* at 50.

⁹⁶ *Id.* at 51-52.

⁹⁷ *Id.* at 52.

⁹⁸ *Id.* at 52-53.

⁹⁹ See Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011), and accompanying Issues and Decision Memorandum at Comment 9; Petitioner’s Case Brief at 53-54.

¹⁰⁰ See Petitioner’s Rebuttal Brief at 5-8.

¹⁰¹ See CXS’s Case Brief at 6.

¹⁰² See CXS’s Rebuttal Brief at 21-23.

¹⁰³ *Id.* at 23.

¹⁰⁴ See Titan’s Case Brief at 6-7.

are preferable to surrogate financial ratios based on financial statements from producers of merchandise comparable to the merchandise under consideration.¹⁰⁵

- The Department should not use the financial statements proposed by Petitioner because none of these financial statements are from companies that produce wind towers. The production processes that are required in order to manufacture the dramatically different products produced by these companies preclude their use as a source of surrogate financial ratios.¹⁰⁶

Department's Position:

The Department has used the financial statements of Master Tower to value manufacturing overhead, SG&A expenses, and profit for the final determination because Master Tower's financial statements best conform to the criteria considered by the Department when choosing the best available information to value the financial ratios.

In accordance with section 773(c)(1) of the Act, the Department bases its valuation of factory overhead, SG&A expenses, and profit on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate." In choosing the best available information to value manufacturing overhead, SG&A expenses, and profit, the Department will normally use non-proprietary information - generally publicly available financial statements - gathered from producers of identical or comparable merchandise in the surrogate country.¹⁰⁷ The Department prefers these financial statements to be complete, free of evidence of receipt of countervailable subsidies, and contemporaneous with the POI.¹⁰⁸ The Department also may disregard financial statements that are not sufficiently detailed to permit the calculation of the one or more of the surrogate financial ratios and do not constitute the best available information on the record.¹⁰⁹ Moreover, the Department generally prefers to use the financial statements of producers of identical merchandise from the surrogate country over the financial statements of producers of comparable merchandise.¹¹⁰

In this case, the Department selected Thailand as the surrogate country for the final determination. Because the record contains financial statements of Thai producers, the Department evaluated these financial statements to determine whether they conform to the criteria considered by the Department when choosing the best available information to value the

¹⁰⁵ See Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 41744 (July 16, 2012) ("Hand Trucks 2012"), and accompanying Issues and Decision Memorandum at Comment 2; Titan's Case Brief at 6-7.

¹⁰⁶ See Titan's Rebuttal Brief at 3-7.

¹⁰⁷ See 19 CFR 351.408(c)(4).

¹⁰⁸ See 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), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰⁹ See, e.g., Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) ("Citric Acid"), and accompanying Issues and Decision Memorandum at Comment 1; Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011) ("PET Film 2011"), and accompanying Issues and Decision Memorandum at Issue 1.

¹¹⁰ See, e.g., Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 2; Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012) ("PET Film 2012"), and accompanying Issues and Decision Memorandum at Comment 2.

financial ratios. After careful examination of the two Thai financial statements on the record, the Department has determined that Master Tower's financial statements are the best available information for use in deriving the surrogate financial ratios.

First, the Department has found that Master Tower's financial statements are complete, publicly available, and contemporaneous with the POI.

Second, contrary to Petitioner's claim that Master Tower produces only lattice towers and monopoles for small wind, telecom, and power transmission industries, the evidence on the record indicates that Master Tower produces merchandise identical to the merchandise under consideration. Specifically, Master Tower produces wind turbine towers that are up to 200 meters tall and can support equipment that can generate between 200 watts and five megawatts of electricity.¹¹¹ Master Tower describes its towers not only as lattice truss guyed towers but also as "self-support" wind towers.¹¹² Thus, Master Tower is involved in the production of both identical merchandise and other types of smaller towers. Petitioner claims that the financial ratios of producers of these smaller towers, such as Master Tower, do not reflect the experience of producers in the wind tower industry because producers like Master Tower have different production processes, overhead costs, and labor requirements than producers of the merchandise under consideration. However, Petitioner overlooks the facts that (1) Master Tower, as explained above, also produces merchandise identical to the merchandise under consideration and (2) the respondents in this investigation also produce merchandise other than wind towers (e.g., base rings, ships). Therefore, evidence on the record does not support Petitioner's claim that Master Tower's financial ratios do not reflect the experience of other wind tower producers.

Third, while Petitioner claims that Master Tower benefitted from subsidies provided by the Thailand BOI, the Department has determined that Petitioner's assertion is not supported by evidence on the record. As noted above, the Department prefers to use financial statements from companies that have not benefitted from countervailable subsidies.¹¹³ However, the Department's determination of whether to use the financial statements of a producer that potentially received a countervailable subsidy cannot be, nor is it intended to be, a full investigation of the subsidy program in question.¹¹⁴ Instead, the Department's practice is to review the financial statements to determine whether the evidence indicates that the company received a countervailable subsidy during the relevant period from a program previously investigated by the Department. In this case, Master Tower's financial statements include "suspense input tax," which Petitioner claims is granted through Thailand's Investment

¹¹¹ See Titan's Post-Preliminary Determination Rebuttal SV Submission at Exhibit 2; Letter from Petitioner to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Post-Preliminary Rebuttal Surrogate Value Information" (September 24, 2012) ("Petitioner's Post-Preliminary Determination Rebuttal SV Submission") at Exhibit 1.

¹¹² See Petitioner's Post-Preliminary Determination Rebuttal SV Submission at Exhibit 1.

¹¹³ See Chlorinated Isocyanurates From the People's Republic of China: Final Results of 2008-2009 Antidumping Duty Administrative Review, 75 FR 70212 (November 17, 2010), and accompanying Issues and Decision-Memorandum at Comment 3.

¹¹⁴ See Omnibus Trade and Competitiveness Act of 1988, H.R. REP. No. 576, 100th Cong., 2d Sess. 590 (1988) (Conf. Rep.) reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24 ("In valuing such factors, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. However, the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intend that Commerce base its decision on information generally available to it at the time.").

Promotion Act (“IPA”).¹¹⁵ As an initial matter, there is no evidence in Master Tower’s financial statements that “suspense input tax” refers to an IPA subsidy program.¹¹⁶ Rather, Petitioner alleges that “suspense input tax” “corresponds directly to the type of duty exemptions and reductions on raw materials and inputs the Thai BOI grants to the alternative energy industry.”¹¹⁷ Moreover, even if “suspense input tax” is an IPA subsidy program, the Department has found that the IPA is not per se countervailable; instead the IPA has been found countervailable when the approval of promotional privileges was determined to be based on an export commitment or the company’s location in a regional investment zone.¹¹⁸ Master Tower’s financial statements do not contain evidence that the company was provided IPA promotional privileges based on these criteria. Therefore, the evidence on the record does not provide reason to believe or suspect that Master Tower received countervailable subsidies during the period in question.

Fourth, the financial statements of the second Thai producer, Asian Marine, do not conform to the criteria considered by the Department when selecting information to value the financial ratios. Because Asian Marine’s financial statements do not itemize raw materials, labor, and energy, an unacceptable degree of estimation would be required to derive the surrogate financial ratios from Asian Marine’s financial statements.¹¹⁹ Consistent with the Department’s practice to disregard financial statements that are incomplete and/or not sufficiently detailed to permit the calculation of the one or more of the surrogate financial ratios, the Department does not consider Asian Marine’s financial statement suitable for use in the final determination.¹²⁰ Further, the Department has found that Asian Marine produces ships, steel structures for bridges, and factory components, but does not produce merchandise identical to the merchandise under consideration.¹²¹ Consistent with the Department’s preference to use financial statements of a producer of identical merchandise over the financial statements of a producer of non-identical merchandise, the Department has used only Master Tower’s financial statements for the final determination.¹²²

For the reasons above, the Department has used Master Tower’s financial statements to value factory overhead, SG&A expenses, and profit for the final determination.¹²³ Because sufficient, accurate, and reliable data for calculating the surrogate financial ratios is available from the

¹¹⁵ See CXS’s Post-Preliminary Determination SV Submission at Exhibit 5; Petitioner’s Rebuttal Brief at 4.

¹¹⁶ See CXS’s Post-Preliminary Determination SV Submission at Exhibit 5.

¹¹⁷ See Petitioner’s Rebuttal Brief at 4.

¹¹⁸ See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462 (March 21, 2005), and accompanying Issues and Decision Memorandum at II.D, Comment 3.

¹¹⁹ See Petitioner’s Post-Preliminary Determination SV Submission at Exhibit 7.

¹²⁰ See Citric Acid, and accompanying Issues and Decision Memorandum at Comment 1; PET Film 2011, and accompanying Issues and Decision Memorandum at Issue 1.

¹²¹ See Petitioner’s Post-Preliminary Determination SV Submission at Exhibit 7.

¹²² See Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 2; PET Film 2012, and accompanying Issues and Decision Memorandum at Comment 2.

¹²³ It is the Department’s preference, consistent with 19 CFR 351.408(c)(2), to value FOPs in a single surrogate country, when possible. Because the Department has determined that Master Tower’s financial statements conform to the criteria considered by the Department when choosing the best available information to value the financial ratios, the Department has not considered financial statements of any of the South African and Philippine producers of comparable merchandise for the final determination. Further, because the Department is no longer using Mazor Group’s financial statements for the final determination, the Department did not consider Petitioner’s suggested adjustments to Mazor Group’s financial ratios.

surrogate country, the circumstances in this case do not necessitate using financial statements from other countries.

Comment 3: Whether the Department Should Revise the SV for Brokerage and Handling

Titan

- The Department miscalculated the SV for brokerage and handling by unnecessarily adjusting the per-kg cost of brokerage and handling for a 20-foot container to reflect the per-kg cost of brokerage and handling for a 40-foot container.¹²⁴
- The brokerage and handling fees are reported on a transactional basis. There is no evidence on the record that these fees would change based on the size of the container.¹²⁵
- The Department should use the unadjusted per-kg cost reported for a 20-foot container to value brokerage and handling.¹²⁶

Petitioner

- The Department should not revise the SV for brokerage and handling in the final determination.¹²⁷
- The Department's methodology in the Preliminary Determination was consistent with its practice of adjusting the SV to reflect the container size used by the respondents.¹²⁸
- Given the total weight of each shipment of towers typical in this investigation, brokerage and handling fees specific to the weight reflected by a 40-foot container better capture the expenses as applied to shipments of towers.¹²⁹

Department's Position:

The Department has determined that it miscalculated the SV for brokerage and handling in the Preliminary Determination by adjusting the per-kg brokerage and handling rate for a 20-foot container by the ratio of the capacity of a 40-foot high flat rack relative to the cargo weight of a 20-foot container. The Department, noting the distinction between total brokerage and handling costs and per-unit brokerage and handling rates, has previously found that, absent record evidence to the contrary, total brokerage and handling costs increase proportionally with a container's capacity and, therefore, per-unit brokerage and handling rates do not change as a container's capacity increases.¹³⁰ After reviewing the information on the record of this investigation, the Department has determined that there is no evidence that the total brokerage and handling costs for a 20-foot container do not increase proportionally with the larger capacity of the 40-foot high flat rack. Therefore, consistent with its past practice, the Department has found that the per-kg brokerage and handling rate is the same for both the 20-foot container and the 40-foot high flat rack and, thus, the rate already reflects the actual experience of the

¹²⁴ See Titan's Case Brief at 5.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ See Petitioner's Rebuttal Brief at 16.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 8, 2010), and accompanying Issues and Decision Memorandum at Comment 22 (affirmed in Dongguan Sunrise Furniture Co. vs. United States, No. 10-00254, 2012 WL 2045753, at *20 (Ct. Int'l Trade June 6, 2012)).

respondents. Accordingly, the Department has used the unadjusted per-kg brokerage and handling rate for a 20-foot container to value brokerage and handling in the final determination.¹³¹

Comment 4: Whether Base Rings are Included in the Scope of the Investigation

Petitioner

- Base rings are included in the scope of the investigation.¹³²
- Titan’s Verification Report indicates that base rings are attached to the bottom sections of wind towers at the time of shipment and, therefore, are included in the scope of the investigation.¹³³
- 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.” The base ring forms a base on which the sections are placed to form the assembled wind tower. Therefore, any measurement from the base of the tower would include the base ring.¹³⁴
- The scope proposed in the Petition in no way limited the definition of a wind tower section based on the number of steel plates. A subsequent scope revision, drafted in response to requests from the Department, demonstrated Petitioner’s concern that limiting the definition of a wind tower section to only those segments comprised of multiple steel plates would provide a means for producers and exporters to circumvent the AD order by shipping wind towers in single plate pieces.¹³⁵

CXS

- Base rings are not included in the scope of this investigation.¹³⁶
- A base ring is neither a wind tower nor a section of a tower. Rather, the base ring is an optional, unattached wind tower accessory and, therefore, not classified as merchandise under consideration.¹³⁷
- CXS’s base rings are not attached to the tower sections at the time of shipment. The base ring is bolted to the tower only after the base ring and tower sections arrive on site.¹³⁸
- The concept of “section,” which is defined as a part of a tower that can be connected to other sections to create a completed tower, does not apply to base rings. No number of base rings connected or stacked in any fashion would ever create a complete tower.¹³⁹

Titan

- The Department correctly determined in the Preliminary Determination that base rings are not included in the scope of this investigation.¹⁴⁰

¹³¹ See Final Determination SV Memorandum at 3-4, Attachment 8.

¹³² See Petitioner’s Case Brief at 57-59.

¹³³ See Titan’s Verification Report at 16; Petitioner’s Case Brief at 58.

¹³⁴ See Petitioner’s Case Brief at 58.

¹³⁵ Id. at 58-59.

¹³⁶ See CXS’s Rebuttal Brief at 20-21.

¹³⁷ Id.

¹³⁸ Id. at 21.

¹³⁹ Id.

¹⁴⁰ See Titan’s Rebuttal Brief at 16-17.

- The base rings that Titan sold during the POI do not meet the scope’s definition of a wind tower section because they (1) consisted of a single steel plate per base ring and (2) were not attached to the wind tower sections at the time of shipment.¹⁴¹
- Petitioner’s intentions with regard to the scope are not a valid justification for ignoring the scope’s clear language.¹⁴²

Department’s Position:

The Department has determined that the base rings sold by CXS and Titan during the POI are not included in the scope of this investigation because (1) these base rings do not meet the scope’s description of wind tower sections and (2) the Petitioner’s arguments in support of alternative reasons for finding these base rings within the scope are not persuasive.

Prior to the Preliminary Determination, the Department examined the issue of whether base rings are included in the scope.¹⁴³ Based on parties’ responses and 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,” the Department preliminarily determined that the base rings sold by CXS and Titan during the POI are not covered by the scope of the investigation because they consist of only a single steel plate.¹⁴⁴ At verification, the Department confirmed that the base rings sold by CXS and Titan during the POI were constructed of only a single steel plate.¹⁴⁵ Therefore, the Department continues to find that CXS’s and Titan’s base rings do not meet the scope’s minimum requirements to be classified as wind tower sections.

Despite this finding, Petitioner argues that there are alternative reasons that CXS’s and Titan’s base rings are included in the scope of this investigation. For the reasons below, the Department has found Petitioner’s arguments to be unpersuasive.

First, in response to Petitioner’s observation that Titan’s Verification Report indicates that base rings are attached to the bottom sections of wind towers at the time of shipment, the Department has reviewed Titan’s Verification Report and has found that the statement that “the base rings are welded to the tower shell” was inaccurate.¹⁴⁶ The Department should have stated that “the flanges are welded to the tower shell.” This is consistent with the evidence on the record, which

¹⁴¹ Id.

¹⁴² See ArcelorMittal Stainless Belgium N.V. v. United States, 694 F.3d 82 (Fed. Cir. 2012); Titan’s Rebuttal Brief at 17.

¹⁴³ See Letter from Petitioner to the Secretary of Commerce, “Utility Scale Wind Towers from the People’s Republic of China: Response to the Department’s Supplemental Questionnaire Regarding Base Rings” (July 3, 2012); Letter from CXS to the Secretary of Commerce, “Utility Scale Wind Towers from the People’s Republic of China: Response of Chengxi Shipyard Co., Ltd. to Supplemental Questionnaire Regarding Base Rings” (July 3, 2012); Letter from Titan to the Secretary of Commerce, “Utility Scale Wind Towers from People’s Republic of China: Supplemental Section D Questionnaire Response of Titan Wind Energy (Suzhou) Co., Ltd.” (July 3, 2012) (“Titan’s Base Ring Comments”).

¹⁴⁴ See Preliminary Determination, 77 FR at 46040.

¹⁴⁵ See Memorandum from Shawn Higgins and Trisha Tran, International Trade Compliance Analysts, AD/CVD Operations, Office 4, to the File, “Antidumping Duty Investigation of Utility Scale Wind Towers from the People’s Republic of China: Verification of the Antidumping Duty Questionnaire Responses of Chengxi Shipyard Co., Ltd.” (September 21, 2012) (“CXs’s Verification Report”) at 22; Titan’s Verification Report at 16.

¹⁴⁶ See Titan’s Verification Report at 16.

indicates that Titan's base rings are ordered, invoiced, and shipped separately from the tower sections.¹⁴⁷ In fact, there is no evidence on the record that any respondent welds its base rings to the tower sections before shipment. Therefore, Petitioner's claim that Titan's base rings are attached to the tower sections is not supported by record evidence.

Second, Petitioner is incorrect that its intent to include base rings in the scope of this investigation is evident from the Petition. In the Petition, Petitioner never claimed that base rings are an integral part of a wind tower. In fact, Petitioner 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."¹⁴⁸ Therefore, according to the Petition, a tower is constructed of sections. Notably 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.¹⁴⁹ In this investigation, in response to a request by the Department to clarify the term "sections" in the scope of the Petition, Petitioner 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."¹⁵⁰ These subassemblies, according to Petitioner, are referred to as wind tower sections.¹⁵¹ Accordingly, Petitioner 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."¹⁵² Therefore, the Department has determined that Petitioner clearly intended to limit the definition of wind tower sections to items consisting of more than one steel plate, which is a definition that excludes CXS's and Titan's base rings. For these reasons, Petitioner's argument that it intended to include base rings in the Petition is not supported by the evidence on the record.

Third, contrary to Petitioner'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. As an initial matter, Petitioner does not identify any evidence on the record that the "base of the tower" refers to base rings rather than base sections. Further, as explained above, the Department has found that CXS's and Titan's base rings are not wind tower sections, as described in the scope, and are also not attached to the wind tower or sections thereof. Therefore, "base of the tower" could not refer to CXS's and Titan's base rings because, if it did, this would imply that that a wind tower subject to the scope may include internal and external components that are unattached to the wind towers

¹⁴⁷ See Titan's Base Ring Comments at 3-6.

¹⁴⁸ See Letter from Petitioner to the Secretary of Commerce, "Petition for the Imposition of Antidumping and Countervailing Duties: Utility Scale Wind Towers from the People's Republic of China and The Socialist Republic of Vietnam" (December 29, 2011) ("Petition") at 8.

¹⁴⁹ See, e.g., 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), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵⁰ See Letter from Petitioner to the Secretary of Commerce, "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.

¹⁵¹ Id.

¹⁵² Id. at Exhibit I-5.

and sections, such as CXS's and Titan's base rings. This proposition is in direct contravention with the language of the scope, which states that any internal or external components that are not attached to the wind towers or sections are excluded. Accordingly, a measurement "from the base of the tower to the bottom of the nacelle" does not include CXS's and Titan's base rings. Therefore, the Department has found that CXS's and Titan's base rings are not included in the scope's description of wind towers.

For the reasons above, the Department has determined that CXS's and Titan's base rings are not included in the scope of this investigation. Accordingly, the Department did not include the base rings sold by CXS and Titan to the United States during the POI in the calculations of the weighted-average dumping margins for the final determination.

Comment 5: Whether the Department Should Offset the Antidumping Cash Deposit Rate for Export Subsidies

Petitioner

- The Department should not offset the AD cash deposit rate by the export subsidy rate calculated in the concurrent countervailing duty ("CVD") investigation if that export subsidy rate is based on adverse facts available ("AFA").¹⁵³
- If the Department offsets the AD cash deposit rate by an export subsidy rate that is based on AFA, there will be, in effect, no adverse inference applied to the respondents because the net effect on respondents' total duty liability will be neutral. As a result, the application of AFA will not provide future respondents with an incentive to respond to the Department's inquiries.¹⁵⁴

Titan

- The Department should not depart from its established practice of offsetting the AD cash deposit rate by the amount of export subsidies found in a concurrent CVD investigation.¹⁵⁵
- Reversing the Department's policy that allows for an offset simply because a respondent was given AFA is tantamount to imposing a punitive sanction.¹⁵⁶ AFA may not be applied punitively.¹⁵⁷
- Offsetting the AD cash deposit rate by the amount of export subsidies has no effect on the eventual assessment of ADs.¹⁵⁸

Department's Position:

The Department has determined to offset the AD cash deposit rate by the export subsidy rate calculated in the concurrent CVD investigation. In doing so, the Department has followed section 772(c)(1)(C) of the Act and its established practice of offsetting the AD cash deposit rate

¹⁵³ See Petitioner's Case Brief at 67-68.

¹⁵⁴ Id.

¹⁵⁵ See Titan's Rebuttal Brief at 18.

¹⁵⁶ Id.

¹⁵⁷ See Gallant Ocean (Thailand) Co., Ltd. v. United States, 602 F.3d 1319, 1323 (Fed. Cir. 2010); KYD, Inc. v. United States, 607 F.3d 760, 767-68 (Fed. Cir. 2010); Titan's Rebuttal Brief at 18.

¹⁵⁸ See Titan's Rebuttal Brief at 18.

by the amount of export subsidies found in a concurrent CVD investigation.¹⁵⁹ The Department adheres to this practice regardless of whether the export subsidy rate is based on AFA.¹⁶⁰ Moreover, contrary to Petitioner's claim, offsetting the AD cash deposit rate by an export subsidy rate that is based on AFA will not have the effect of neutralizing the adverse inference applied to the respondents. Rather, such an offset ensures that the adverse inference used to calculate the export subsidy rate is applied to the respondents only once (i.e., as a CVD and not through potentially higher AD duties). Therefore, for the final determination, the Department will offset the AD cash deposit rate by the export subsidy rate calculated in the concurrent CVD investigation.

Comment 6: Whether the Department Should Grant CXS a Separate Rate

Petitioner

- The Department should determine that CXS is not a separate entity from the PRC government because CXS has not established an absence of de jure and de facto government control.¹⁶¹
- Regarding de jure government control, the Interim Regulations on the Supervision and Administration of Enterprise State-Owned Assets ("Interim Regulations") and the PRC Law on the State-Owned Assets of Enterprises ("State-Owned Assets Law") state that state-owned enterprises ("SOEs") are owned and controlled by the government. There is no evidence that these laws and regulations govern only the government's direct ownership interests in companies. In fact, the Department has signaled that the Interim Regulations apply to a subsidiary of an SOE when the SOE holds a majority ownership stake.¹⁶² Here, through its 61 percent ownership of China CSSC Holdings Limited ("CSSC Holdings"), the PRC government owns CXS and, therefore, the Interim Regulations apply to the majority share interest in CSSC Holdings and CXS.¹⁶³
- The Interim Regulations state that the State-Owned Assets Supervision and Administration Commission of the State Council ("SASAC") performs the responsibilities of the investor, as specified in the Company Law of the PRC ("Company Law"), with regard to SOEs. The Company Law authorizes investors, including the government, to elect directors to ensure

¹⁵⁹ See Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17430 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 5 (stating that the Act "requires a full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings").

¹⁶⁰ See, e.g., Pre-Stressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560, 28563 (May 21, 2010); Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at "Grant Programs Treated as Export Subsidies Pursuant to AFA"; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791, 63796 (October 17, 2012) ("Solar Cells"); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012), and accompanying Issues and Decision Memorandum at Comment 18.

¹⁶¹ See Petitioner's Case Brief at 69-81.

¹⁶² See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010) ("Carbon Steel Plate"), and accompanying Issues and Decision Memorandum at Comment 1; Petitioner's Case Brief at 74.

¹⁶³ See Petitioner's Case Brief at 72-76.

that their business strategies and policies are implemented. Both CXS's and CSSC Holdings' articles of association reinforce the fact that SASAC-owned China State Shipbuilding Corporation ("CSSC"), as the majority shareholder of CSSC Holdings, retains these investor rights for both CXS and CSSC Holdings.¹⁶⁴

- Regarding de facto government control, the record indicates that CXS is controlled by the central government both directly, as a matter of national security, and indirectly, through SASAC and CXS's ultimate corporate parent, CSSC.¹⁶⁵
- The central government directly controls CSSC and its subsidiaries, such as CXS, because CSSC and its subsidiaries are among the largest naval warship builders in the PRC and, therefore, vital to the PRC's national security.¹⁶⁶
- CSSC, which is directly administered by SASAC, is the controlling shareholder of CXS because the record of this investigation demonstrates that CSSC owns over 61 percent of CSSC Holdings and CSSC Holdings owns 100 percent of CXS. This is consistent with CXS's responses to the Department's supplemental questionnaires in which CXS admitted that the "actual controller" of CXS is CSSC, not CSSC Holdings.¹⁶⁷
- CSSC owns enough shares of CSSC Holdings to control the outcome of all "common decisions" made during CSSC Holdings' shareholder meetings, including the appointment and removal of directors and the distribution of profits. Therefore, CSSC has unfettered discretion to retain profits and make management choices for CSSC Holdings, which, in turn, chooses CXS's management.¹⁶⁸
- The management and directors of CXS, CSSC Holdings, and CSSC are so intertwined that any assertion that the three companies operate independently of one another is a fiction.¹⁶⁹
- CSSC's authority flows through CSSC Holdings to CXS's export activities. Specifically, CSSC and CSSC Holdings were involved in the creation of CXS's business plan. Because CXS's business plan contains a sales goal but not a profit goal, CXS is incentivized to lower export prices to make as many sales as possible.¹⁷⁰

CXS

- It is clear from the record of this investigation, including the information collected at verification, that there is an absence of de jure and de facto control by the PRC government over CXS.¹⁷¹
- Regarding de jure government control, the Department found at verification that CXS's business license, articles of association, and foreign trade operator registration form do not contain any restrictive conditions. Moreover, the Department confirmed at verification that the Interim Regulations and the State-Owned Assets Law are not applicable to CXS because those laws and regulations are applicable only to companies in which the state has a direct shareholding and neither CXS nor its parent company, CSSC Holdings, are directly invested by the state.¹⁷²

¹⁶⁴ Id. at 74.

¹⁶⁵ Id. at 76-81.

¹⁶⁶ Id. at 69-72, 79-81.

¹⁶⁷ Id. at 69-72.

¹⁶⁸ Id. at 77.

¹⁶⁹ Id. at 77-78.

¹⁷⁰ Id. at 77-79.

¹⁷¹ See CXS's Rebuttal Brief at 14-20.

¹⁷² Id. at 14-15.

- Regarding de facto government control, the Department confirmed at verification that CXS: (1) established its own export prices, (2) negotiated contracts without guidance from any government entity or organization, (3) made its own personnel decisions, and (4) used the proceeds of its export sales in accordance with its business needs.¹⁷³
- The fact that CSSC – a company that is CXS’s ultimate shareholder but did not exercise actual control over CXS - declined to submit documents regarding its internal management and organization has no bearing on CXS’s eligibility for a separate rate. The Department confirmed at verification that CXS is an independently operated company that had no access to documents regarding CSSC’s internal management and organization.¹⁷⁴
- The Department has found that government ownership interest in a company does not preclude the necessary independence to qualify for a separate rate.¹⁷⁵ The Department has granted separate rates to companies that are owned by SASAC, including Baosteel Group Corporation, which is a co-owner of CSSC Holdings, and companies that produce products with strategic importance to the PRC government (e.g., state-owned producers of steel products and oil production equipment).¹⁷⁶ Moreover, the theoretical possibility that the government may exercise control through its shareholding interests is not sufficient to deny a company a separate rate.¹⁷⁷
- There is no evidence on the record that the PRC government controls the allocation of resources in the shipbuilding and/or green energy industries. CXS’s managers demonstrated at verification that their procurement for wind towers is perfectly transparent and related only to the material requirements specified by a particular wind tower order.¹⁷⁸

Department’s Position:

The Department has granted CXS a separate rate in the final determination because CXS has demonstrated an absence of de jure and de facto government control over its export activities.

First, for the reasons below, CXS has demonstrated an absence of de jure government control over its export activities. In order for the Department to conclude that a company operates independently with respect to its export activities, the exporter must submit evidence on the record to demonstrate an absence of government control over such activities both in law (i.e., de

¹⁷³ Id. at 15-16.

¹⁷⁴ Id. at 17-18.

¹⁷⁵ See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews; 71 FR 54269 (September 14, 2006) (“Hand Tools”), and accompanying Issues and Decision Memorandum at Comment 3; CXS’s Rebuttal Brief at 19.

¹⁷⁶ See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People’s Republic of China, 66 FR 49632 (September 28, 2001) (“Carbon Steel Flat Products”), and accompanying Issues and Decision Memorandum at Comment 1; Carbon Steel Plate, and accompanying Issues and Decision Memorandum at Comment 1; Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335, 20338-40 (April 19, 2010); CXS’s Rebuttal Brief at 18-19.

¹⁷⁷ See Hand Tools, and accompanying Issues and Decision Memorandum at Comment 3; CXS’s Rebuttal Brief at 19.

¹⁷⁸ See CXS’s Rebuttal Brief at 19-20.

jure) and in fact (i.e., *de facto*).¹⁷⁹ Evidence supporting a finding of the absence of *de jure* government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the company; and (3) other formal measures by the government decentralizing control over export activities of the company.¹⁸⁰ After analyzing the information provided by CXS, the Department has found that CXS has demonstrated an absence of restrictive stipulations associated with its business license and Foreign Trade Operator Registration Form.¹⁸¹ CXS has also demonstrated that certain legislative enactments protect the operational and legal independence of companies that are incorporated in the PRC, such as CXS.¹⁸² Specifically, CXS has indicated that it is subject to a number of laws that the Department has consistently found to establish an absence of *de jure* control, including the Company Law of the PRC and the Foreign Trade Law of the PRC.¹⁸³ Despite CXS's statements to the contrary, Petitioner claims that, in addition to the Company Law of the PRC and the Foreign Trade Law of the PRC, the Interim Regulations and the State-Owned Assets Law are also applicable to CXS.¹⁸⁴ This claim, which Petitioner does not support with record evidence, has no bearing on the Department's finding of an absence of *de jure* government control over CXS's export activities. The Department has found that the Interim Regulations provide for a separation of government functions from enterprise management and affirm the operational autonomy of companies operating under SASAC.¹⁸⁵ These same principles are maintained in the State-Owned Assets Law.¹⁸⁶ Therefore, while the Interim Regulations and the State-Owned Assets Law may provide SASAC with a role in overseeing the overall regulation, development, and structure of a state-owned sector, there is no evidence on the record indicating that the Interim Regulations or the State-Owned Assets Law permits SASAC to control CXS's day-to-day export activities as a matter of law.

¹⁷⁹ See Import Administration's Policy Bulletin No. 05.1, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries" (April 5, 2005) ("Policy Bulletin 05.1"), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf> at 1.

¹⁸⁰ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers").

¹⁸¹ See CXS's Verification Report at 7-8; Letter from CXS to the Department of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Section A Questionnaire Response of Chengxi Shipyard Co., Ltd." (April 5, 2012) ("CXs's Section A Response") at Exhibits A.9, A.10.

¹⁸² See CXS's Section A Response at 10; CXS's Verification Report at 7, Exhibit 6.

¹⁸³ See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews, 75 FR 34100, 34103 (June 16, 2010), unchanged in Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews, 75 FR 79337 (December 20, 2010); Carbon Steel Plate, and accompanying Issues and Decision Memorandum at Comment 1.

¹⁸⁴ See Petitioner's Case Brief at 72-76; Letter from CXS to the Department of Commerce, "Utility Scale Wind Towers from the PRC: Supplemental Section A Questionnaire Response of Chengxi Shipyard Co., Ltd." (May 17, 2012) ("CXs's Section A Supplemental") at 1-6; Letter from CXS to the Department of Commerce, "Utility Scale Wind Towers from the PRC: Part Two of Supplemental Sections A and C Questionnaire Response of Chengxi Shipyard Co., Ltd." (June 25, 2012) ("CXs's Sections A&C Supplemental") at 1-9, Exhibits A.73-A.76.

¹⁸⁵ See Solar Cells, and accompanying Issues and Decision Memorandum at Comment 6.

¹⁸⁶ For example, Article 6 of the State-Owned Assets Law states that the government "shall perform the capital contributor's duties and responsibilities in accordance with the law based on the principles of separation of government functions from enterprise management, separation of public administrative functions and responsibilities of State-owned assets contributors and no interference in enterprises' independent operation under the law." See CXS's Sections A&C Supplemental at Exhibit A.73.

The Department has further determined that the fact that CXS's parent is a second level subsidiary of SASAC is not a sufficient reason to find that the government maintains de jure control over CXS's export activities. The Department has previously found an absence of de jure government control for companies with various forms of state ownership, including some forms that display a far more direct level of state ownership than the state's indirect shareholding of CXS observed in this investigation.¹⁸⁷ Further, contrary to Petitioner's assertion that the Company Law authorizes SASAC to use its ownership shares of CSSC to ensure that CXS implements certain business strategies and policies, the Department has recognized that the government's legal control of relevant day-to-day activities devolves to other parties when the government's ownership is distributed, as long as the government does not directly exercise its rights to vote on ownership boards.¹⁸⁸ The evidence on the record does not support a finding that either SASAC or any other governmental entity was involved in the activities or selection of CXS's board of directors.¹⁸⁹ Rather, the available evidence indicates that CXS's board of directors is appointed by CXS's sole shareholder, CSSC Holdings, in accordance with Article 10 of CXS's articles of association.¹⁹⁰ At verification, the Department reviewed CXS's "Notice of New Corporate Governance Structure Members of Chengxi Shipyard Co., Ltd.," in which CSSC Holdings selected CXS's board of directors and board of supervisors, and did not note any evidence that the government was directly involved in the selection of CXS's board members.¹⁹¹ For these reasons, the Department has determined that the PRC government did not possess legal control of CXS's day-to-day export activities.

Second, in addition to demonstrating an absence of de jure government control, CXS has also demonstrated an absence of de facto government control over its export activities. The Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.¹⁹² After reviewing the information on

¹⁸⁷ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China, 59 FR 55625, 55627-29 (November 8, 1994) (granting separate rates to shareholding companies in which the PRC government held shares); Carbon Steel Flat Products, and accompanying Issues and Decision Memorandum at Comment 1 (granting a separate rate to a respondent owned by all the people (i.e., Baosteel Group)); Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009) ("Circular Welded Pipe"), and accompanying Issues and Decision Memorandum at Comment 11 (granting a separate rate to a first-level subsidiary of a company directly owned by SASAC); Carbon Steel Plate, and accompanying Issues and Decision Memorandum at Comment 1 (granting a separate rate to a first-level subsidiary of a state-owned enterprise); Solar Cells, and accompanying Issues and Decision Memorandum at Comment 6 (granting separate rates to respondents indirectly owned by SASAC).

¹⁸⁸ See Solar Cells, and accompanying Issues and Decision Memorandum at Comment 6.

¹⁸⁹ See CXS's Verification Report at 9-11; CXS's Section A Response at Exhibit A.12, A.14; CXS's Section A Supplemental at 1-6.

¹⁹⁰ See CXS's Verification Report at 9-11; CXS's Section A Response at Exhibit A.12, A.14; CXS's Section A Supplemental at 1-6.

¹⁹¹ See CXS's Verification Report at 11.

¹⁹² See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585, 22586-87 (May 2, 1994) ("Silicon Carbide"); Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

the record pertaining to these factors and considering Petitioner's arguments, the Department has determined that the record of this investigation does not demonstrate that the government maintains either direct or indirect de facto control over CXS's export activities. The information provided by Petitioner in support of its claim that the government directly controls CXS does not address the separate rate test's primary focus "on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level"; rather it addresses only CSSC's importance to the PRC's national security and the government's general control over companies, such as CSSC, that are members of defense-related industries.¹⁹³ Similarly, the documents that CXS was unable to provide to the Department are not specific to CXS's day-to-day export activities but, instead, relate specifically to CSSC.¹⁹⁴

Further, the Department has found no evidence on the record that the government's influence extends through SASAC, CSSC, and CSSC Holdings to the day-to-day export activities of CXS. Petitioner has not submitted any evidence that the government is able to exert such indirect de facto control over CXS's export activities. Rather, to support its claim that government authority flows through CSSC and CSSC Holdings to CXS's export activities, Petitioner relies on (1) the theoretical effects that SASAC's ownership of CSSC may have on CXS's export activities, (2) the potential that the intertwined boards and management of CSSC, CSSC Holdings, and CXS could affect CXS's export operations, and (3) the possibility that CSSC and CSSC Holdings may influence CXS's export prices through the creation of CXS's business plan.¹⁹⁵ These reasons are inadequate to base a finding that CXS's export activities are controlled by the government because ownership and/or theoretical control by the government is not sufficient to deny a separate rate; rather, the evidence on the record must demonstrate that the government controls the individual export decisions of the respondent.¹⁹⁶ Moreover, CXS has provided information demonstrating its ability to set its own export prices, to negotiate and sign agreements, to select management, and to decide how to dispose of profits and finance losses.¹⁹⁷ For example, CXS has provided: (1) sales correspondence, sales agreements, and sales contracts demonstrating that export prices are set through direct negotiations with customers and take into account the cost of production and market conditions; (2) board of directors resolutions in which CXS's board of directors elected the general manager and deputy general managers; and (3) CXS's Proposal on Profits Distribution, which was formulated by CXS's board of directors.¹⁹⁸ The Department reviewed the original versions of these documents at verification and did not note any evidence that the government was directly involved in CXS's sales negotiation, price setting, selection of management, or profit distribution.¹⁹⁹ Therefore, the Department has determined that the

¹⁹³ See Policy Bulletin 05.1 at 1.

¹⁹⁴ CXS was unable to provide (1) appointment letters and evaluations of CSSC's management, (2) the identities of the members of CSSC's board of supervisors, and (3) a complete list of all CSSC's affiliates. With regard to the third item, CSSC has provided a signed certification stating that no affiliates of CSSC, except for CXS and one of CXS's subsidiaries, are involved in the export and/or production of the merchandise under consideration. See CXS's Section A Supplemental at Exhibit A.51.

¹⁹⁵ See Petitioner's Case Brief at 69-79.

¹⁹⁶ See Circular Welded Pipe, and accompanying Issues and Decision Memorandum at Comment 11; Policy Bulletin 05.1 at 1.

¹⁹⁷ See CXS's Section A Response at 11-17, Exhibits A.2, A.4, A.14, A.21; CXS's Section A Supplemental at 7-42, Exhibits A.45, A.61; CXS's Verification Report at 9-11, 19-20, Exhibits 7, 14a-14e.

¹⁹⁸ See CXS's Section A Response at 11-17, Exhibits A.2, A.4, A.14, A.21; CXS's Section A Supplemental at Exhibits A.45, A.61; CXS's Verification Report at 9-11, 19-20, Exhibits 7, 14a-14e.

¹⁹⁹ See CXS's Verification Report at 9-11, 19-20.

evidence on the record supports a finding that CXS is not subject to de facto government control of its export functions.

For the reasons explained above, the evidence placed on the record of this investigation by CXS demonstrates an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide. Accordingly, the Department has granted a separate rate to CXS in the final determination.

Comment 7: Whether the Department Should Apply AFA to CXS

Petitioner

- The Department should apply AFA to CXS because CXS has impeded the investigation and not acted to the best of its ability by not providing the Department with information regarding whether CXS's military-controlled corporate parent (i.e., CSSC) is affiliated with other wind tower producers.²⁰⁰
- CSSC's refusal to provide information about its subsidiaries prevents the Department from knowing whether other entities should be collapsed with CXS and whether CXS's databases are complete.²⁰¹
- The Department should assign CXS an AFA rate equal to the 213.54 percent dumping margin calculated in the Initiation Notice.²⁰²

CXS

- The Department should not apply AFA to CXS because CXS was a fully responsive throughout the course of this investigation and cooperated to the best of its ability.²⁰³
- The Department confirmed at verification that CXS had no access to documents regarding CSSC's internal management and organization. Therefore, it is wholly inaccurate and misleading to assert that CXS withheld information.²⁰⁴

Department's Position:

The Department has determined not to apply AFA to CXS because the company acted to the best of its ability to obtain the information requested by the Department.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an

²⁰⁰ See Petitioner's Case Brief at 81-83.

²⁰¹ Id. at 81-83.

²⁰² See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations, 77 FR 3440, 3445 (January 24, 2012); Petitioner's Case Brief at 83-84.

²⁰³ See CXS's Rebuttal Brief at 20.

²⁰⁴ Id. at 17.

inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Court of Appeals for the Federal Circuit has stated that an adverse inference can be drawn only “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown” and only after the Department conducts “a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing {the Department} with the requested information.”²⁰⁵ In previous cases where a respondent did not provide information requested by the Department, the Department has found that an adverse inference was warranted when this information was in the respondent’s possession.²⁰⁶ Conversely, the Department has not applied an adverse inference to respondents that did not provide information requested by the Department when the respondent acted to the best of its ability to obtain the requested information.²⁰⁷

The evidence on the record indicates that CXS acted to the best of its ability to obtain the information requested by the Department. When the Department requested CXS to provide a complete list of CSSC’s affiliates, CXS sent a letter to CSSC requesting this information.²⁰⁸ In response to CXS’s letter, CSSC informed CXS that it cannot disclose information regarding certain of CSSC’s affiliates which “involve defense matters as business secrets, and the identity of which is prohibited from release.”²⁰⁹ However, CSSC answered the relevant part of the inquiry by providing a signed certification stating that no affiliates of CSSC, except for CXS and one of CXS’s subsidiaries, are involved in the export and/or production of the merchandise under consideration.²¹⁰ Prompted by a second request by the Department for information regarding CSSC’s affiliates, CXS renewed its request for the information from CSSC, but CSSC again declined to provide the requested information.²¹¹ The Department has found that, by requesting information from CSSC on more than one occasion and obtaining a certification that none of the undisclosed affiliates are involved in the export and/or production of the merchandise under consideration, CXS acted to the best of its ability to obtain the information requested by the Department and sufficiently addressed the issue.

Accordingly, the Department has determined that there is no basis for finding that CXS failed to act to the best of its ability to comply with the Department’s requests for information and, therefore, will not to apply AFA to CXS in the final determination.

²⁰⁵ See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003).

²⁰⁶ See, e.g., Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 3201 (January 20, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (applying AFA based on the respondent’s failure to provide production notes, customer correspondence, and sales documentation that it had in its possession).

²⁰⁷ See, e.g., Solar Cells, and accompanying Issues and Decision Memorandum at Comment 33 (finding that the application of AFA was not warranted because the respondent acted to the best of its ability to comply with the Department’s request by making attempts to obtain information possessed by its unaffiliated tollers).

²⁰⁸ See CXS’s Section A Supplemental at Exhibit A.51.

²⁰⁹ Id. at 35, Exhibit A.51.

²¹⁰ Id. at Exhibit A.51.

²¹¹ See CXS’s Sections A&C Supplemental at 17.

Comment 8: Whether the Department Should Revise the SV for CXS's Expanded Metal

CXS

- The Department should not value expanded metal using the unreliable and inaccurate value derived from Ukrainian imports under tariff sub-category 7314.50.²¹²
- The Ukrainian import data used to value expanded metal in the Preliminary Determination include values for imports from Germany for June, July, and August 2011, but do not include the import quantities associated with these values.²¹³
- The volume of imports into Ukraine under tariff sub-category 7314.50 that were used to calculate the AUV in the Preliminary Determination (i.e., 176 kg) is too small to be a reliable SV source. In fact, this volume of imports is much smaller than the amount of expanded metal consumed by CXS for the job orders under consideration (i.e., over 80,000 kg).²¹⁴
- The Ukrainian AUV is derived exclusively from German and Italian imports, which are likely small, highly specialized items that are unlike the commoditized expanded metal that CXS purchased by the ton.²¹⁵
- The Ukrainian AUV for the POI (i.e., \$24.88/kg) appears to be anomalous when compared with the Ukrainian AUV for the full year 2011 (i.e., \$2.16/kg).²¹⁶
- The Department should value expanded metal using South African imports under tariff sub-category 7314.50. The South African import data is more reliable and accurate than the Ukrainian import data because South Africa imported a larger volume of merchandise under tariff sub-category 7314.50 and the AUV derived from the South African import data better reflects the real-world value of expanded metal.²¹⁷

Petitioner

- The Department should not revise the SV for expanded metal in the manner suggested by CXS.²¹⁸
- To test the reliability of a SV, the Department's practice is to compare the selected SV to the AUVs calculated for the same period using data from the other surrogate countries the Department designated for the proceeding.²¹⁹ Therefore, rather than comparing the Ukrainian prices to prices from only South Africa, CXS should have compared the Ukrainian data with SVs for expanded metal from all countries that the Department identified as economically comparable to the PRC. However, such a comparison is now impossible

²¹² See CXS's Case Brief at 2-4.

²¹³ Id. at 3.

²¹⁴ Id. at 3.

²¹⁵ Id. at 3-4.

²¹⁶ Id. at 4.

²¹⁷ Id. at 4.

²¹⁸ See Petitioner's Rebuttal Brief at 9-12.

²¹⁹ See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66087 (December 14, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 5; Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 1; Petitioner's Rebuttal Brief at 9.

because CXS did not place on the record any pricing data from the other economically comparable countries.²²⁰

- The 2010 and 2011 Ukrainian import data on the record demonstrates that the AUVs for imports from Germany and Italy during the POI (i.e., \$40.38/kg and \$8.39/kg, respectively) are clearly within the range of AUVs provided. For example, the AUVs of the imports from Germany were \$40/kg in May 2010 and \$103/kg in August 2010.²²¹
- The Department's long-standing position is not to reject a SV simply because of low import volumes.²²²
- The Department has long recognized that AUVs derived from import data reflect broad market values, even if the imports were from only a few countries.²²³
- There is no evidence on the record indicating that the merchandise that Ukraine imported from Germany and Italy was highly specialized.²²⁴

Department's Position:

The Department has determined to value CXS's expanded metal using Thai imports under tariff sub-category 7314.50. When choosing the best available SV information, the Department considers several factors including the specificity, contemporaneity, and quality of the data.²²⁵ While there is no hierarchy for applying the SV selection 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 SV is for each input.²²⁶ Further, it is the Department's preference, consistent with 19 CFR 351.408(c)(2), to value FOPs in a single surrogate country, when possible.²²⁷ However, where no suitable SV is available from the surrogate country, the Department has valued FOPs in other countries that have been found to be significant producers of comparable merchandise and economically comparable to the NME in question.²²⁸ The Department has reviewed the SV data on the record and has determined that several countries that have been found to be significant producers of comparable merchandise and economically comparable to the PRC offer import data for sub-category 7314.50 that are of equal specificity, contemporaneity, and quality. However, the selection of Thai import data would be consistent with the Department's preference to value FOPs in a single surrogate country, when possible. Therefore, for the final determination, the Department has valued CXS's expanded metal using Thai imports under tariff sub-category 7314.50, which is the sub-category recommended by both CXS and Petitioner.²²⁹

²²⁰ See Petitioner's Rebuttal Brief at 9-11.

²²¹ *Id.* at 12.

²²² See Graphite Electrodes, and accompanying Issues and Decision Memorandum at Comment 5; Petitioner's Rebuttal Brief at 11.

²²³ See Steel Cylinders, and accompanying Issues and Decision Memorandum at Comment 1; Petitioner's Rebuttal Brief at 11-12.

²²⁴ See Petitioner's Rebuttal Brief at 12.

²²⁵ See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010) ("Copper Pipe"), and accompanying Issues and Decision Memorandum at Comment 6.

²²⁶ See Frozen Shrimp, and accompanying Issues and Decision Memorandum at Comment 10.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ See Final Determination SV Memorandum at Attachment 1.

Comment 9: Whether the Department Should Revise the SV for CXS's Bus Bars

CXS

- The Department's decision in the Preliminary Determination to value CXS's bus bars using the Ukrainian tariff sub-category containing imports of un-insulated bus bars was inappropriate because CXS used insulated bus bars in the merchandise under consideration. Therefore, the Department should value CXS's bus bars using the Ukrainian tariff sub-category containing imports of insulated bus bars (i.e., 8544.60).²³⁰
- Specifically, the Department should value bus bars using Ukrainian tariff item 8544.60.9090, which contains imports of aluminum bus bars exceeding 10,000 volts, because the Department observed at verification that CXS used aluminum bus bars in the merchandise under consideration.²³¹

Department's Position:

The Department has determined to use Thai tariff sub-category 8544.60 to value CXS's bus bars. Section 773(c)(1) of the Act instructs the Department to use the "best available information" from the appropriate ME to value the factors of production. When choosing the best available SV information, the Department considers several factors including the specificity, contemporaneity, and quality of the data.²³² While there is no hierarchy for applying the SV selection 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 SV is for each input.²³³ Further, it is the Department's preference, consistent with 19 CFR 351.408(c)(2), to value FOPs in a single surrogate country, when possible.²³⁴ However, where no suitable SV is available from the surrogate country, the Department has valued FOPs in other countries that have been found to be significant producers of comparable merchandise and economically comparable to the NME in question.²³⁵ After considering these factors, the Department has determined to use Thai tariff sub-category 8544.60, which contains imports of insulated bus bars, to value CXS's bus bars because the Department has verified that CXS used insulated bus bars in the merchandise under consideration and Thai tariff sub-category 8544.60 is the SV information on the record that is most specific to insulated bus bars.²³⁶ The use of Thai tariff sub-category 8544.60 to value CXS's bus bars is also consistent with the Department's preference to value FOPs in a single surrogate country, when possible. Additionally, the Department has not found, and CXS has not identified, evidence on the record that CXS's bus bars have aluminum conductors. Therefore, the Department has determined that the evidence on the record does not support a finding that Ukrainian tariff item 8544.60.9090 is more specific than Thai tariff sub-category 8544.60 to CXS's bus bars. For these reasons, the Department used Thai tariff sub-category 8544.60 to value CXS's bus bars.²³⁷

²³⁰ See CXS's Case Brief at 4-5.

²³¹ Id. at 5.

²³² See Copper Pipe, and accompanying Issues and Decision Memorandum at Comment 6.

²³³ See Frozen Shrimp, and accompanying Issues and Decision Memorandum at Comment 10.

²³⁴ Id.

²³⁵ Id.

²³⁶ See Memorandum to the File from Trisha Tran, Case Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Investigation: Utility Scale Wind Towers from the People's Republic of China; Surrogate Value Information for Insulated Bus Bar, Wooden Pallet, and Steel Lashing" (September 11, 2012) at Attachment 2.

²³⁷ See Final Determination SV Memorandum at Attachment 1.

Comment 10: Whether the Department Should Revise the SV for CXS's Tarpaulin

CXS

- The Ukrainian tariff item used by the Department in the Preliminary Determination to value tarpaulin (i.e., 5911.90.9090) was not specific to tarpaulin.²³⁸
- In the final determination, the Department should use Ukrainian tariff sub-category 6306.12 to value tarpaulin because this sub-category is specific to “Tarpaulins, awnings and sunblinds, of synthetic fibers.”²³⁹

Department's Position:

The Department has determined to use Ukrainian tariff sub-category 6306.12, which is specific to “Tarpaulins, awnings and sunblinds, of synthetic fibers,” to value CXS's tarpaulin. Section 773(c)(1) of the Act instructs the Department to use the “best available information” from the appropriate ME to value the factors of production. When choosing the best available SV information, the Department considers several factors including the specificity, contemporaneity, and quality of the data.²⁴⁰ While there is no hierarchy for applying the SV selection 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 SV is for each input.²⁴¹ Further, it is the Department's preference, consistent with 19 CFR 351.408(c)(2), to value FOPs in a single surrogate country, when possible.²⁴² However, where no suitable SV is available from the surrogate country, the Department has valued FOPs in other countries that have been found to be significant producers of comparable merchandise and economically comparable to the NME in question.²⁴³ The Department has determined that no suitable SV is available from Thailand to value tarpaulin. Specifically, Thai import data for tariff sub-category 6306.12 is not on the record. Therefore, for the final determination, the Department has used the Ukrainian tariff sub-category 6306.12 to value CXS's tarpaulin because this sub-category specifically includes CXS's tarpaulins.²⁴⁴

Comment 11: Whether the Department Should Value CXS's River Water Using the SV for Municipal Water

CXS

- In the Preliminary Determination, the Department erred by including both free river water and the electricity consumed to pump free river water in CXS's normal value.²⁴⁵
- The Department should exclude free river water from CXS's normal value because the electricity used to pump the free river water is already accounted for in the reported electricity factor used in the normal value calculation.²⁴⁶

²³⁸ See CXS's Case Brief at 5-6.

²³⁹ Id.

²⁴⁰ See Copper Pipe, and accompanying Issues and Decision Memorandum at Comment 6.

²⁴¹ See Frozen Shrimp, and accompanying Issues and Decision Memorandum at Comment 10.

²⁴² Id.

²⁴³ Id.

²⁴⁴ See Final Determination SV Memorandum at Attachment 1.

²⁴⁵ See CXS's Case Brief at 7.

²⁴⁶ Id.

Department's Position:

The Department has not valued CXS's river water using the SV for municipal water for the final determination. Section 773(c)(4) of the Act specifies that FOPs are to be valued based on the prices or costs of the factors in the chosen comparable ME country. After reviewing the record of this investigation, the Department has found that the record contains Thai SV information for water supplied by municipal utilities but does not contain SV information for river water.²⁴⁷ Additionally, there is no evidence on the record that Thai wind tower producers' river water is supplied by municipal utilities, at costs associated with such utilities. Accordingly, the Department has not valued river water itself but, rather, valued the energy used by CXS to pump the river water from its source.²⁴⁸ Therefore, for the final determination, the Department applied the electricity SV to the electricity consumption related to pumping river water, which is included in CXS's reported total electricity consumption.²⁴⁹

Comment 12: Whether the Department Should Exclude Stainless Steel Round Bars from CXS's Normal Value

CXS

- In the Preliminary Determination, the Department double counted stainless steel round bars by including both stainless steel round bars and finished bushings, which contain stainless steel round bars, in the calculation of CXS's normal value. The Department should correct this error by excluding stainless steel round bars from CXS's normal value in the final determination.²⁵⁰

Petitioner

- The Department should include both stainless steel round bars and finished bushings in CXS's normal value in the final determination because the record contains no evidence demonstrating that stainless steel round bars are included in the finished bushing FOP.²⁵¹

Department's Position:

The Department has excluded the cost of stainless steel round bars from CXS's normal value for the final determination. In the Preliminary Determination, the Department found that CXS, without explanation, omitted from its FOP database stainless steel round bars that CXS had previously stated were used by certain tollers during the production of a part used in the merchandise under consideration. The Department added stainless steel round bars back to

²⁴⁷ See Final Determination SV Memorandum at 3, Attachment 4.

²⁴⁸ See "Final Results of Redetermination Pursuant to Court Remand: Taian Ziyang Food Co. v. United States, 637 F. Supp. 2d 1093 (Ct. Int'l Trade 2009)" (March 12, 2010) at 15-16 (affirmed in Taian Ziyang Food Co. v. United States, 783 F. Supp. 2d 1292, 1306-08 (Ct. Int'l Trade 2011)); Jinan Yipin Corp. v. United States, 526 F. Supp. 2d 1347, 1375 (Ct. Int'l Trade 2007) (holding that, absent record evidence to support the fact, the Department cannot presume that Indian garlic producers "typically irrigate their garlic crops using water supplied by municipal utilities, at costs associated with such utilities").

²⁴⁹ See Final Determination SV Memorandum at 2, Attachment 4; CXS's Verification Report at 48-51, Exhibits 1,

24.

²⁵⁰ See CXS's Case Brief at 7-8.

²⁵¹ See Petitioner's Rebuttal Brief at 13.

CXS's FOP database and included the cost of stainless steel round bars in CXS's normal value in the Preliminary Determination.²⁵² However, after reviewing the record of this investigation, the Department has determined that it was incorrect to add stainless steel round bars to CXS's FOP database. Specifically, the Department has found that stainless steel round bars are not included in the bills of materials that list the materials used in the production of the part originally reported to contain stainless steel round bars.²⁵³ Therefore, the Department has determined that the record supports CXS's claim that stainless steel round bars should not have been added back to the FOP database.

Comment 13: Whether the Department Should Use CXS's Reported ME Purchase Prices

CXS

- The Department should use the actual purchase prices to value CXS's inputs that were purchased from an ME source because the record contains (1) purchase orders and commercial invoices demonstrating that CXS's ME purchases were sourced in MEs and paid for in ME currencies and (2) official PRC customs import documentation confirming the ME origin of these inputs.²⁵⁴
- Certificates of origin are just one way of proving an input's country of origin. For example, the Department has previously found that purchase orders, invoices, and official customs documentation are sufficient to demonstrate the country of origin.²⁵⁵
- The Department never informed CXS that certificates of origin were the only acceptable method to prove the country of origin. Moreover, by inquiring about the availability of CXS's certificates of origin only 10 days before the signature date of the Preliminary Determination, the Department did not allow CXS sufficient time to obtain the certificates of origin from its suppliers.²⁵⁶
- CXS relied on the Department's established practice when submitting evidence to demonstrate the country of origin of its ME purchases. The Department's sudden imposition, without advanced notice, of a new evidentiary rule that contradicts its established practice is anomalous, arbitrary, and an abuse of the Department's discretion.²⁵⁷

Petitioner

- The Department should not use CXS's ME purchase prices to value CXS's inputs.²⁵⁸

²⁵² See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Utility Scale Wind Towers from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Chengxi Shipyard Co., Ltd." (July 26, 2012) at 5.

²⁵³ See CXS's Verification Report at Exhibit 17.

²⁵⁴ See CXS's Case Brief at 8-9.

²⁵⁵ See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 76 FR 15295 (March 21, 2011) ("Ironing Tables"), and accompanying Issues and Decision Memorandum at Comment 7; Graphite Electrodes, 77 FR at 40854; Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty Administrative Review, 76 FR 36083 (June 21, 2011) ("Hand Trucks 2011"); Laminated Woven Sacks From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 55568 (September 13, 2010) ("LWS"); CXS's Case Brief at 9-10.

²⁵⁶ See CXS's Case Brief at 10.

²⁵⁷ Id. at 10-12.

²⁵⁸ See Petitioner's Rebuttal Brief at 13-15.

- By not providing any certificates of origin, CXS has failed to demonstrate that its inputs were produced in a ME.²⁵⁹ It is the Department's practice to require certificates of origin to establish whether inputs were produced in an ME.²⁶⁰
- The Department has found that purchase orders, invoices, and customs documentation alone are insufficient to establish whether inputs were produced in an ME.²⁶¹ The Department will accept customs documentation as proof of an ME origin only when the documentation is furnished by a credible independent agency – not the PRC government.²⁶²
- CXS was informed that it needed to provide certificates of origin to value its ME inputs in the Department's July 16, 2012 Section D supplemental questionnaire.²⁶³
- At the time of the Preliminary Determination, the Department explicitly stated that CXS was not entitled to use ME prices to value its inputs because CXS did not provide the certificates of origin necessary to demonstrate that its inputs were produced in MEs. CXS could have attempted to obtain the certificates of origin for its ME purchases during the period between the Department's July 26, 2012 Preliminary Determination and the start of verification on August 13, 2012.²⁶⁴

Department's Position:

The Department has determined not to use CXS's reported ME purchase prices in the final determination because (1) CXS has not demonstrated that these inputs were produced in MEs and (2) CXS's arguments in support of alternative reasons to use CXS's reported ME purchase prices are not persuasive.

When a respondent sources inputs that were produced in an ME from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies.²⁶⁵ The Department requires respondents to support their claims that inputs are produced in an ME by submitting certificates of origin for the inputs in question.²⁶⁶ CXS has claimed that certain of its reported inputs were purchased in MEs and paid for in ME currencies.²⁶⁷ However, CXS has been unable to demonstrate, either before or since the Preliminary Determination, that these inputs were produced in MEs by providing these inputs' certificates of origin.²⁶⁸

²⁵⁹ Id. at 14-15.

²⁶⁰ See Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 1; Petitioner's Rebuttal Brief at 14.

²⁶¹ See Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 1; Petitioner's Rebuttal Brief at 15.

²⁶² See Petitioner's Rebuttal Brief at 15.

²⁶³ Id. at 14.

²⁶⁴ Id. at 14-15.

²⁶⁵ See 19 CFR 351.408(c)(1); Antidumping Duties; Countervailing Duties, 62 FR at 27366; Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 1.

²⁶⁶ See, e.g., Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 1; Hand Trucks 2011, and accompanying Issues and Decision Memorandum at Comment 1.

²⁶⁷ See Letter from CXS to the Secretary of Commerce, "Utility Scale Wind Towers from the People's Republic of China: Section D Questionnaire Response of Chengxi Shipyard Co., Ltd." (April 30, 2012) at 10.

²⁶⁸ See Letter from CXS to the Secretary of Commerce, "Utility Scale Wind Towers from the PRC: Fifth Supplemental Section D Questionnaire Response of Chengxi Shipyard Co., Ltd." (July 18, 2012) at 4; CXS's Case Brief at 8-12.

Despite its inability to fulfill this requirement, CXS argues that there are alternative reasons that the Department should use CXS's reported ME purchase prices. For the reasons below, the Department has found CXS's arguments to be unpersuasive.

CXS's claim that it should not be required to submit certificates of origin because the Department has previously found that other documentation was sufficient to demonstrate the country of origin is not supported by the cases cited by CXS. Of the four cases cited by CXS, only Hand Trucks 2011 discusses the issue of an input's origin and provides a full accounting of the evidence on the record.²⁶⁹ In Hand Trucks 2011, the Department stated that "the record of this review contains country-of-manufacture information from two sources - (1) country-of-origin certificates from the supplier of the input...or from an independent agency, and (2) commercial invoices from {the respondent's} purchases of ME inputs during the POR."²⁷⁰ In the subsequent review, the Department further explained that, in Hand Trucks 2011, it "accepted a statement of 'country of origin' or 'made in' on a commercial invoice when it was presented in conjunction with a certificate-of-origin as proof of an item being produced in an ME."²⁷¹ Therefore, rather than supporting CXS's claim that purchase orders, invoices, and official customs documentation are sufficient to demonstrate the country of origin, Hand Trucks 2011 actually provides further evidence of the Department's current practice of requiring respondents to support their ME purchase claims with certificates of origin.

In addition to providing further support for the Department's practice, Hand Trucks 2011 and Hand Trucks 2012 also discredit CXS's claims that the Department's Preliminary Determination represented a "sudden imposition of a new evidentiary rule" that contradicts its established practice. The excerpts from these determinations in the previous paragraph indicate that the Department required respondents to support their ME purchase claims with certificates of origin for well over a year before the Department's Preliminary Determination. The Department subsequently reaffirmed this practice prior to the Preliminary Determination in Hand Trucks 2012 on July 16, 2012.²⁷² Therefore, contrary to CXS's claims, the Preliminary Determination was consistent with the Department's current practice which reasonably requires sufficient evidence to support an ME purchase claim.

Moreover, even if CXS was previously unaware of the Department's current practice, CXS had sufficient time to submit certificates of origin to the Department. Specifically, CXS had three weeks to submit this information between the date on which the Department requested CXS to submit certificates of origin (i.e., July 16, 2012)²⁷³ and the deadline to submit factual information (i.e., August 6, 2012).²⁷⁴ Moreover, CXS, like Titan, could have asked the Department to review the certificates of origin during verification.

²⁶⁹ See Hand Trucks 2011, and accompanying Issues and Decision Memorandum at Comment 1. Ironing Tables, Graphite Electrodes, and LWS do not discuss the issue of an input's origin and/or do not specifically address the record evidence on which their origin findings are based.

²⁷⁰ See Hand Trucks 2011, and accompanying Issues and Decision Memorandum at Comment 1.

²⁷¹ See Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 1.

²⁷² Id.

²⁷³ See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to CXS, "Fifth Section D Supplemental Questionnaire in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China" (July 16, 2012) at 4.

²⁷⁴ According to 19 CFR 351.301(b)(1), the deadline to submit factual information for a final determination in an AD investigation is seven days before the date on which the verification of any person is scheduled to commence.

For the reasons above, the Department continues to find that CXS has not demonstrated that its reported ME purchases were produced in an ME. Therefore, the Department has not used CXS's reported ME purchase prices in the final determination.

Comment 14: Whether Titan Reported the Correct Number of Flanges

Petitioner

- The Department found at verification that Titan reported an incorrect number of flanges in the examined control number (“CONNUM”).²⁷⁵
- The schematic drawing of the tower model on the record demonstrates that the reported number of flanges was incorrect.²⁷⁶

Titan

- The Department verified Titan's consumption of flanges at verification and confirmed that the number of flanges reported was correct.²⁷⁷
- The record evidence that Petitioner cites in support of its claim that Titan reported the incorrect number of flanges is related to base rings, not tower sections.²⁷⁸

Department's Position:

The Department agrees with Titan in part. The sentence in Titan's Verification Report cited by Petitioner contains a typographical error, in which the product characteristic code for the number of flanges in the CONNUM was misconstrued as the number of flanges in the model. As stated in Titan's Verification Report, Titan supported the number of flanges in the model, and there were no discrepancies between the reported number of flanges and the number of flanges shown in the schematic diagram of Titan's product model.²⁷⁹ Therefore, the Department is making no changes for the final determination.

Comment 15: Whether the Department Should Use Titan's Reported ME Purchase Price for Winches

Titan

- The Department should value Titan's winches using the reported ME purchase price because the Department examined Titan's ME purchase records at verification and confirmed that the conditions for using ME purchase prices were met.²⁸⁰
- Titan demonstrated at verification that it purchased 100 percent of its winches from an ME supplier using an ME currency.²⁸¹

The Department's first verification in this investigation (i.e., the verification of CXS) commenced on August 13, 2012.

²⁷⁵ See Petitioner's Case Brief at 84-85.

²⁷⁶ Id.

²⁷⁷ See Titan's Rebuttal Brief at 17.

²⁷⁸ Id.

²⁷⁹ See Titan Verification Report at 15.

²⁸⁰ See Titan's Case Brief at 3-4.

²⁸¹ Id. at 4-5.

Department's Position:

The Department has determined to value Titan's winches using the reported ME purchase price. When a respondent sources inputs that were produced in an ME from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies.²⁸² The Department requires respondents to support their claims that inputs are produced in an ME by submitting certificates of origin for the inputs in question.²⁸³ The Department did not use Titan's reported ME purchase prices in its normal value calculation in the Preliminary Determination because Titan was unable to demonstrate that these inputs were produced in MEs by providing these inputs' certificates of origin.²⁸⁴ However, at the Department's verification, Titan was able to obtain, and provide to the Department, documentation of origin from the actual producers of the winches used in the merchandise under consideration.²⁸⁵ Specifically, the Department viewed (1) email correspondence between Titan and the supplier in which Titan solicited additional copies of the certificates of origin and (2) the scanned color copies of the certificates of origin that were emailed to Titan in response to Titan's request. For each of the reported ME purchases, the Department traced the certificates of origin to the corresponding purchase order, invoice, shipping documents, payment vouchers, bank remittance documents (showing payment to the supplier in ME currency), and warehouse receipt. No parties have rebutted Titan's claims that its winches were manufactured in a ME, purchased from an ME supplier, and paid for in an ME currency. Therefore, the Department will use Titan's reported ME purchase price for winches in the final determination.²⁸⁶

Comment 16: Whether the Department Should Exclude the Packing FOPs Used to Make Shipping Fixtures

Titan

- Given that price of shipping fixtures was excluded from the gross unit price as merchandise not under consideration in the Preliminary Determination, the FOP inputs used to make those shipping fixtures should similarly be removed from the Department's normal value calculation. Specifically, in the final determination, the Department should exclude seven packing FOPs from the normal value calculation.²⁸⁷

Department's Position:

The Department agrees with Titan in part. In its questionnaire responses, Titan reported shipping some of the merchandise under consideration with a shipping fixture that it manufactured; while for other U.S. sales, Titan reused shipping fixtures returned by the U.S. customer from prior

²⁸² See 19 CFR 351.408(c)(1); Antidumping Duties; Countervailing Duties, 62 FR at 27366; Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 1.

²⁸³ See Hand Trucks 2012, and accompanying Issues and Decision Memorandum at Comment 1.

²⁸⁴ See Letter from Titan to the Secretary of Commerce, "Utility Scale Wind Towers from People's Republic of China: Supplemental Section D Questionnaire Response (Part 3) of Titan Wind Energy (Suzhou) Co., Ltd." (July 9, 2012) ("Titan's July 9, 2012 Supplemental Section D") at 9.

²⁸⁵ See Titan's Verification Report at 30.

²⁸⁶ See Titan's Final Determination Analysis Memorandum at 5-6, Attachment I.

²⁸⁷ See Titan's Case Brief at 6.

shipments.²⁸⁸ At Titan's verification, the Department noted that the shipping fixtures were manufactured from steel plate (i.e., the steel plate for packing reported by Titan in its FOP database).²⁸⁹ In the Preliminary Determination, the Department found that shipping fixtures should be considered a consumable in Titan's overhead because the shipping fixtures used to ship the merchandise under consideration do not pertain to any specific unit of the merchandise but, rather, are returned and reused for repeatedly shipping merchandise. On that basis, the Department did not include Titan's reported reused shipping fixture FOP in Titan's packing costs in the Preliminary Determination.

At Titan's verification, in response to an inquiry by the Department regarding how often shipping fixtures are reused, Titan officials stated that Titan does not keep track of these details because the shipping fixtures belong to its customer.²⁹⁰ Titan further explained that it manufactures shipping fixtures and sells them to the customer, and the customer returns the shipping fixtures to Titan so that they may be reused to ship additional merchandise. Titan stated that, if the shipping fixtures cannot be reused, Titan manufactures and sells additional shipping fixtures to the customer.²⁹¹

Because the reused shipping fixtures are not Titan's property, they cannot be considered to be a consumable in Titan's overhead. At the point that they are reused, the shipping fixtures could be considered to be a consumable of Titan's customer and, thus, would correctly be excluded from the NV calculation with respect to Titan. However, as the shipping fixtures are initially manufactured by Titan as a packing material for the merchandise under consideration, the Department has found that the manner in which Titan reported shipping fixtures was correct. Specifically, Titan included FOPs for its manufacture of shipping fixtures (i.e., steel plate of specific dimensions to make shipping fixtures) in its FOP database, and allocated the price of shipping fixtures, in its U.S. sales database, over the total U.S. price of the merchandise for which they were initially used.

Therefore, for the final determination, the Department will value Titan's reported packing FOPs used in the manufacture of shipping fixtures. However, the Department will deactivate the adjustment to the U.S. sales database that it made in the Preliminary Determination, which had removed the allocated surcharge for shipping fixtures from Titan's gross unit price calculation.²⁹²

Comment 17: Whether the Department Should Grant Titan a By-Product Offset

Titan

- The Department should grant Titan a by-product offset for sales of steel scrap generated during the production process because the Department has verified Titan's reported sales quantities of steel scrap.²⁹³

²⁸⁸ See Letter from Titan to the Secretary of Commerce, "Utility Scale Wind Towers from People's Republic of China: Supplemental Section D Questionnaire Response of Titan Wind Energy (Suzhou) Co., Ltd." (June 13, 2012) at 42-44.

²⁸⁹ See Titan's Verification Report at 41.

²⁹⁰ Id.

²⁹¹ Id.

²⁹² See Titan's Final Determination Analysis Memorandum at 4-5, Attachment I.

²⁹³ See Titan's Case Brief at 7.

- Alternatively, if the Department declines to grant Titan a full by-product offset, the Department should exclude the first month of scrap sales during the POI while granting Titan an offset for the sales occurring during the remainder of the POI. By limiting the sales included in the calculations, the Department will be better able to capture sales of the scrap that was generated during the POI.²⁹⁴

Petitioner

- The Department should continue to deny Titan a by-product offset because Titan can neither identify the amount of scrap generated in its production of wind towers nor demonstrate a relationship between scrap sold and scrap generated.²⁹⁵
- In cases where a respondent cannot specifically report the quantity of scrap generated during production, the Department has granted a scrap offset only if the respondent demonstrates that the scrap sold was clearly related to the scrap generated.²⁹⁶

Department's Position:

The Department has determined to deny Titan's requested by-product offset. The Department's current practice with respect to by-product offsets is to allow such offsets based on the amount of by-product generated once the by-product has been shown to have commercial value through evidence of sale or reintroduction.²⁹⁷ Titan's requested by-product offsets are based on records of by-product sales.²⁹⁸ Titan stated that it: (1) does not track the inventory movement of by-products; (2) does not record the amount of by-products generated in the normal course of business; and (3) cannot correlate its by-product production to the sale of the same by-product.²⁹⁹ Consistent with the Department's practice to allow offsets based on the amount of by-product generated, the Department did not grant Titan a by-product offset in the Preliminary Determination because Titan could not correlate its by-product sale quantities to production quantities.

During verification, Titan did not attempt to relate the scrap sales to production for either of its facilities. Rather, at verification, the Department found only that (1) the majority of the Suzhou facility's by-product sales during the POI occurred in a single month and that there were far fewer sales during the other months of the POI and (2) the Lianyungang facility's scrap sales were somewhat more evenly spread throughout the period.³⁰⁰

Because the essential facts on the administrative record underlying the Department's decision in the Preliminary Determination to not grant Titan's by-product offset have not changed, the Department will continue to deny Titan's requested by-product offset for the final determination.

²⁹⁴ Id. at 7-8.

²⁹⁵ See Petitioner's Rebuttal Brief at 16-18.

²⁹⁶ See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64313 (October 11, 2011), and accompanying Issues and Decision Memorandum at Comment 23 (citation incorrect); Petitioner's Rebuttal Brief at 17-18.

²⁹⁷ See Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 18.

²⁹⁸ See Titan's July 9, 2012 Supplemental Section D at 18-19.

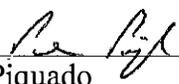
²⁹⁹ Id.

³⁰⁰ See Titan's Verification Report at 42.

RECOMMENDATION

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

Agree Disagree



Paul Piquado
Assistant Secretary
for Import Administration

17 DECEMBER 2012
Date