

March 16, 2011

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Less-Than-Fair-Value Investigation of Steel Wheels from the
People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of steel wheels from the People's Republic of China. As a result of our analysis, we have made changes to the *Preliminary Determination*.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments and rebuttal comments from the parties. Included at the end of this memorandum is an Appendix containing a complete list of the Federal Register Notices, litigation, and other documents cited in the discussion of the issues.

Case Issues:

- Comment 1: Whether the Scope Should Exclude Off-Road/Non-DOT Specification Stamped Wheels
- Comment 2: Whether Double Remedies Arise from the Concurrent CVD Investigation
- Comment 3: Use of PT Prima Alloy's Financial Statement for Surrogate Financial Ratios
- Comment 4: Surrogate Value for Pallet Inputs
- Comment 5: Surrogate Value for Inland Freight
- Comment 6: Critical Circumstances
- Comment 7: Treatment of Administrative Expenses in Centurion's ISE Calculation
- Comment 8: Hot-Rolled Steel Surrogate Value
- Comment 9: Treatment of Harbor Maintenance and Merchandise Processing Fees
- Comment 10: Corrections to Zhejiang Jingu's Databases

List Of Abbreviations And Acronyms Used In This Memorandum:

| Acronym/Abbreviation | Full Name |
|-----------------------------|--|
| Act or Statute | Tariff Act of 1930, as amended |
| AD | Antidumping |
| AD/CVD | Antidumping and Countervailing Duty |
| AUV(s) | Average Unit Value(s) |
| Blackstone/OTR | Blackstone/OTR LLC and OTR Wheel Engineering, Inc. |
| CAFC or Federal Circuit | U.S. Court of Appeals for the Federal Circuit |
| Centurion ¹ | Centurion USA and Jining Centurion, collectively |
| Centurion USA | Centurion Wheel Manufacturing Company |
| CEP | Constructed Export Price |
| CFR | Code of Federal Regulations |
| Chasana | Chasana Global Mandiri, PT |
| CIT or Court | U.S. Court of International Trade |
| Customs or CBP | U.S. Customs and Border Protection |
| CVD(s) | Countervailing Duty |
| Department | Department of Commerce |
| DOT | Department of Transportation |
| EP | Export Price |
| FOP(s) | Factor(s) of Production |
| G&A | General and Administrative Expenses |
| GAO | U.S. Government Accountability Office |
| GATT | General Agreement on Tariffs and Trade |
| GOC | The Government of the People's Republic of China |
| GTA | Global Trade Atlas® Online |
| HRS | Hot Rolled Steel |
| HTS | Harmonized Tariff Schedule |
| HTSUS | Harmonized Tariff Schedule of the United States |
| IDM | Issues and Decision Memorandum |
| IDR | Indonesian Rupiah |
| Indospring | PT Indospring Tbk |
| ISE | Indirect Selling Expense |
| ITC | U.S. International Trade Commission |
| Jiaxing Stone | Jiaxing Stone Wheel Co., Ltd. |
| Jining Centurion | Jining Centurion Wheel Manufacturing Co., Ltd. |
| JTEKT | JTEKT (Thailand) Co., Ltd. |
| Kedaung | PT Kedaung Indah Can Tbk |
| Kg | Kilogram |
| LTFV | Less-Than-Fair Value |
| ME(s) | Market Economy |
| ML&E | Raw Materials, Labor, and Energy |
| NHS | Not for Highway Service |

¹ Jining Centurion, along with its U.S. sales affiliate, Centurion Wheel Manufacturing Company (“Centurion USA”), are referred to, collectively, as the respondent “Centurion,” herein.

List Of Abbreviations And Acronyms Used In This Memorandum:

| Acronym/Abbreviation | Full Name |
|--------------------------------------|--|
| NME | Non-Market Economy |
| NV | Normal Value |
| Petitioners | Accuride Corporation and Hayes Lemmerz International, Inc. |
| POI | Period of Investigation |
| PRC | People's Republic of China |
| PT Mantap | PT Mantap Abiah Abadi |
| PT Prima | PT Prima Alloy Steel Universal Tbk |
| SG&A | Selling, General, and Administrative Expenses |
| Shanghai Yata or Yata | Shanghai Yata Industry Company Limited |
| Siam Lemmerz | Siam Lemmerz Co., Ltd. |
| Sunrise/Topu | Xiamen Sunrise Wheel Group Co., Ltd. and Xiamen Topu Import & Export Co., Ltd., collectively |
| SV(s) | Surrogate Value |
| THB | Thai Baht |
| Titan | Titan International, Inc. |
| WTO | World Trade Organization |
| USD | United States Dollars |
| Zhejiang Jingu ² or Jingu | Zhejiang Jingu Company Limited |

Background: The Department published its *Preliminary Determination* of sales at LTFV and postponement of the final determination on November 2, 2011. The POI is July 1, 2010, through December 31, 2010. The merchandise covered by this investigation order is steel wheels, as described in the "Scope of the Investigation" section of the final determination issued concurrently with this memorandum.

Following the *Preliminary Determination*, on November 2, 2011, the Department issued a supplemental questionnaire to Zhejiang Jingu. Zhejiang Jingu provided its supplemental questionnaire response on November 14, 2011. On November 8, 2011, the Department requested both Zhejiang Jingu and Centurion provide monthly shipment data with regard to the issue of critical circumstances. Both Zhejiang Jingu and Centurion provided monthly shipment information on November 14, 2011. Also on November 14, 2011, Zhejiang Jingu and Centurion submitted additional factual information on the record of the instant case. Between November 21, 2011 and December 9, 2011, the Department conducted verifications of respondents Zhejiang Jingu (including Shanghai Yata) and Jining Centurion (including its U.S. sales affiliate, Centurion USA). On December 19, 2011, Centurion and Zhejiang Jingu submitted additional SV information on the record. Petitioners submitted rebuttal SV information on December 29, 2011. On December 6, 2011, the Department requested that all interested parties provide additional information and comment on issues related to the scope of the petitions, specifically regarding DOT requirements for steel wheels or any other specifications that could be used to differentiate steel wheels Petitioners produce from other types of steel wheels of the same

² As a result of the collapsing of Zhejiang Jingu and Shanghai Yata into a single entity in the *Preliminary Determination*, both Jingu and Yata are referred to, collectively, as the respondent "Zhejiang Jingu," herein.

diameter.³ On December 13, 2011, we received comments regarding requirements for steel wheels from Petitioners, Blackstone/OTR, Zhejiang Jingu, Sunrise/Topu, and Jiaying Stone; on December 22, 2011, we received rebuttal comments from Blackstone/OTR; on December 23, 2011, we received rebuttal comments from Petitioners and Zhejiang Jingu.

In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Determination*. On January 20, 2012, Petitioners, Centurion, Zhejiang Jingu, Blackstone/OTR, and the GOC submitted their case briefs. On January 23, 2012, the Department placed on the record a clarification of certain factual information and offered parties an opportunity to comment on the clarification. On January 25, 2012, Petitioners and Centurion submitted their rebuttal briefs and Petitioners submitted comment on the Department's January 23rd clarification. On February 29, 2012, the Department met with counsel for Blackstone/OTR and Super Grip Corporation, and interested party in this proceeding. The Department met with Petitioners on March 2, 2012.

DISCUSSION OF THE ISSUES

Comment 1: Whether the Scope Should Exclude Off-Road/Non-DOT Specification Stamped Wheels

- Prior to the *Preliminary Determination* and in response to the Department's Request for Information regarding potential DOT requirements for on-the-road wheels, Blackstone/OTR requested the Department include the following exclusion language in the scope of the investigation: "Specifically excluded from the scope are steel wheels which are not stamped with the symbol 'DOT' certifying that the rim complies with all applicable Federal motor vehicle safety standards."
- Blackstone/OTR asserts that it only imports wheels designated NHS, which are wholly different from on-the-road wheels produced by Petitioners. Blackstone/OTR argues that, because Petitioners only produce on-the-road wheels compliant with DOT certification standards, the scope of this investigation should only apply to such wheels. Moreover, Blackstone/OTR argues that the Petition only addresses commercial wheels for on-road usage and the definition of steel wheels, as used by the ITC, does not include NHS wheels.⁴
- Blackstone/OTR also objects to the addition of the HTSUS numbers at the *Preliminary Determination*, claiming that the scope, as redrafted, would include products in which the domestic industry has no interest.
- Zhejiang Jingu supports Blackstone/OTR's contention that non-DOT certified wheels should be excluded from the scope of the investigation and argues that the on-the-road wheel industry is distinct from the off-the-road industry. Zhejiang Jingu avers that the Department is able to clearly delineate between on- and off-the-road wheels based on the DOT vs. NHS

³ See Request for DOT Information.

⁴ Blackstone/OTR cites the following in support of its argument: *OTR Tires/PRC Amended Final and AD Order* (September 4, 2008); *OTR Tires/PRC CVD Order* (September 4, 2008); *Mitsubishi* (Fed. Cir. March 15, 1990); *AD Manual* (2009), chapter 2 at 12; Aluminum Extrusions LTFV Investigation Scope Memo; *Lined Paper/PRC Final* (September 8, 2006); *Pasta/Italy* (June 14, 1996); Petition; 49 CFR 383.5; 19 CFR 351.225(k)(1); 49 CFR 571.110 S4.4.2(c)(d) and 571.120 S5.2(c)(d); *Valkia* (CIT June 18, 2004); and *OTR Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 20.

designations, and cites to *OTR Tires/PRC* (July 15, 2008) as an example to support its contention that the Department should narrow the focus of the scope of this investigation. Furthermore, Zhejiang Jingu concludes that Petitioners distinguish between on- and off-the-road wheels, as Petitioners provide different warranties based on the usage of the wheels.⁵

- Petitioners object to limiting the scope to on-the-road wheels. Petitioners assert that the DOT certification required for operation on public roads is immaterial to whether a wheel can physically be used off-the-road. Additionally, Petitioners have stated that they do in fact produce a variety of off-the-road wheels, which are also stamped with the DOT certification for on-the-road use. Petitioners argue that, unlike in *OTR Tires/PRC* (July 15, 2008) wherein the petitioner clearly distinguished differences between on-road and off-road tires in the written scope of the petition, in this case, Petitioners did not request such a distinction.
- Furthermore, Petitioners assert there are no technical descriptions in the scope of the Petition, or on the record of this investigation, to distinguish between the on- and off-the-road wheels in question.
- Finally, Petitioners contend that the exclusion language proposed by Blackstone/OTR would provide an opportunity to circumvent the ensuing AD duty order by allowing importers to import on-road wheels without the DOT certification as non-subject merchandise and subsequently place the “DOT” symbol on the wheels after they have entered the United States.⁶

Department’s Position: For the final determination we have not amended the scope of the investigation to exclude off-the-road wheels. Petitioners did not differentiate between on- and off-road usage in the Petition and have stated their intent was to cover both in this investigation because they produce a wide range of wheels which are suitable for both on- and off-road usage. As such, the scope of the investigation covers all steel wheels with a wheel diameter of 18 to 24.5 inches, regardless of their intended usage.

Sections 701 and 731 of the Act require the Department to define the scope of merchandise subject to each AD and CVD investigation. The Department’s legal authority to determine the scope of its AD and CVD proceedings is well-established.⁷ Nevertheless, although the Department has the authority to define or clarify the scope of an investigation, it must exercise that authority in a manner which reflects the intent of the petition and does not thwart the statutory mandate to provide the relief requested in the petition.⁸ Thus, “absent an overarching reason to modify the scope in the petition, the Department accepts it.”⁹

We agree with Blackstone/OTR that the Department attempts to define the scope of an investigation as accurately as possible, and that products in which the affected domestic industry has no interest should not be included in the scope of the investigation.¹⁰ Blackstone/OTR cites

⁵ Zhejiang Jingu cites the following in support of its argument: *OTR Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 20.

⁶ Petitioners cite the following in support of their argument: *OTR Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 20; 49 CFR 571.120; and *AD Initiation Notice* (April 26, 2011).

⁷ See e.g., *Mitsubishi* (Fed. Cir. March 15, 1990).

⁸ See *Softwood Lumber/Canada AD Final* (April 2, 2002) and accompanying IDM at “Scope Issues.”

⁹ See *id.* (quotations omitted).

¹⁰ See *AD/CVD Final Rule* (May 19, 1997) 62 FR at 27323, stating that “{the Department intends to avoid} situations where products in which the domestic industry has no interest are included in the scope of an order.”

to Aluminum Extrusions LTFV Investigation Scope Memo, *Lined Paper/PRC Final* (September 8, 2006), and *Pasta/Italy* (June 14, 1996), as cases where the Department narrowed the scope of an investigation, arguing that the Department should do the same herein. However, we find those cases to be inapposite to the facts herein. In *Aluminum Extrusions/PRC* (April 4, 2011), the domestic industry specifically agreed to the exclusion from the scope as requested by another party, explicitly stating that it was not interested in covering that particular product.¹¹ In *Pasta/Italy* (June 14, 1996), the domestic industry also went on record in support of the exclusion as requested by an importer in that case.¹² In the lined paper investigation, the exclusions from the scope were all either requested, or agreed to, by the domestic industry. Moreover, in that case, the Department specifically declined to draft an exclusion for a particular set of products within the covered class or kind of merchandise once the domestic industry expressed its opposition to the proposed exclusion.¹³ In contrast to those cases, we find that Blackstone/OTR's contention that the domestic industry in this case has no interest in covering off-the-road wheels is unsupported by record evidence. In the instant investigation, Petitioners have specifically objected to the requested exclusion and the record demonstrates that they produce steel wheels for all manner of applications, including off-road use and, thus, we find no cause to narrow the scope of this investigation.¹⁴ For the same reasons, we find that Blackstone/OTR has provided no evidence to support its general assertion that the scope of the investigation is overly broad.

Both Zhejiang Jingu and Blackstone/OTR cite to *OTR Tires/PRC* (July 15, 2008), where the Department was able to differentiate between tires designed for off-the-road use and tires designed for on-the-road use. However, unlike the instant case, petitioner in the off-the-road tires case specifically requested that the scope only cover pneumatic tires designed for off-the-road and off-highway use.¹⁵ Furthermore, the scope for *OTR Tires/PRC* (July 15, 2008) provides detailed lists of vehicles for which the off-the-road tires are designed and includes specific designations used by the Tire and Rim Association. Conversely, the scope of the instant investigation provides no such detail because Petitioners produce all manner of steel wheels and have requested that all steel wheels, regardless of their end-use, be covered. The fact that the scope of one investigation is defined in a particular manner is not controlling with regard to the

¹¹ See Aluminum Extrusions LTFV Investigation Scope Memo (unchanged in *Aluminum Extrusions/PRC* (April 4, 2011)).

¹² See *Pasta/Italy* (June 14, 1996), 61 FR at 30330.

¹³ See *Lined Paper/PRC Prelim* (April 17, 2006), 71 FR at 19699 (unchanged in *Lined Paper/PRC Final* (September 8, 2006)).

¹⁴ See Petitioners' Scope Comments at 4. In response to the Department's query as to "whether steel wheels produced by Petitioners are suitable for use in applications other than as steel wheels for highway service," Petitioners stated that they: "manufacture wheels for a vast variety of non-highway service. The wheels produced by petitioners can and are used for a multitude of off-the-road applications. For example, steel wheels produced by petitioners are used in oil field rig transport equipment, mobile cranes, logging and mining equipment, agricultural equipment, as well as in innumerable other off-the-road applications. In many instances petitioners have specifically designed and produced steel wheels with off-the-road applications in mind. For example, petitioners have designed, produced, and sold especially heavy steel wheels for use off-the-road by the logging industry. Indeed, for nearly every vehicle that uses wheels of a size covered by the scope that is used in off-the-road applications petitioners produce a steel wheel that can be used on the vehicle. To provide safe operational performance by ensuring that vehicles are equipped with tires of adequate size and load rating and with rims of appropriate size, type, and designation petitioners identify the rim size, the "DOT" symbol and all other information listed by 49 C.F.R. § 571.120 on all of their steel wheels."

¹⁵ See *OTR Tires/PRC Initiation* (August 6, 2007).

scope of a subsequent investigation, even if for a related product. Thus, while the tire industry was only seeking relief from off-the road tires in that proceeding, in this case, the domestic wheels industry is seeking relief with regard to a class or kind of merchandise that encompasses both on-road and off-road wheels.

First, the record supports Petitioners' contention that it produces both on-road and off-road wheels and that they are seeking relief from imports of both types of products. Because Accuride's catalogue makes no mention of end usage for its wheels (*i.e.*, does not reference on-road, off-road, on-highway, or off-highway), there is no record information indicating that its wheels are limited to either off- or on-road use.¹⁶ Hayes Lemmerz's catalogue, however, explicitly lists "Heavy Duty On / Off-Highway Type M Rims" in addition to "On-Highway" rims and many other wheel entries that do not specify or otherwise limit usage.¹⁷ Additionally, the fact that Hayes Lemmerz provides a distinct warranty for wheels other than for highway use again supports Petitioners' contention that it makes off-road wheels. Thus, contrary to respondents' assertions that Petitioners do not produce the off-highway products in question, the record demonstrates that, in fact, Petitioners' do produce these types of products.¹⁸

Blackstone/OTR notes that Petitioners' catalogues do not advertise seven specific wheel sizes (*i.e.*, 24.5x11.75, 24.5x13, 24.5x15, 20x9, 20x10.5, 20x11, and 20x15) which Blackstone/OTR claims are commonly used in the aerial work platform, telehandler, and underground mining industries.¹⁹ However, Petitioners' catalogues show wheels with diameters ranging from 16 to 24.5 inches and widths from 4 to 14 inches, with many of their wheels being close to (*i.e.*, within a half inch of) the size range Blackstone/OTR claims that Petitioners do not produce.²⁰ Thus, the Department concludes that Petitioners have the ability to produce wheels in that size range. Moreover, Petitioners' catalogues do not claim to be all-inclusive of Petitioners' production capabilities and provide direct contact information for ordering wheels specific to individual customer needs.²¹ Though a specific wheel may not be listed in the Petitioners' catalogue, it does not necessarily follow that Petitioners cannot produce it or do not have an interest in that product.²² Additionally, the fact that Petitioners do not produce these specific wheel sizes does not constitute adequate reason to exclude such wheels from the scope of the investigation when Petitioners expressly intended such products to be included.²³

We are also not persuaded by Zhejiang Jingu's inference that, because Titan, a significant U.S. producer of off-the-road tires and wheels, does not list Petitioners as "major competitors in the

¹⁶ See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 1.

¹⁷ See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 2.

¹⁸ See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 2.

¹⁹ See Blackstone/OTR's Scope Comments at 8.

²⁰ See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibits 1 and 2.

²¹ See *id.*

²² See Petitioner's Rebuttal to Blackstone/OTR's Scope Comments at 4 ("The particular models identified... by Blackstone/OTR are not identified in their {Petitioners'} catalogues because these are not commonly sold, but there is nothing about these sizes that prevent petitioners from producing these sizes.").

²³ See *Aluminum Extrusions/PRC* (April 4, 2011) and accompanying IDM at Comment 3F, where the Department similarly declined to exclude certain products because the petitioner opposed the proposed exclusion and stated that it was capable of manufacturing products that were competitive with the products within the proposed exclusions.

off-highway wheel market,” that Petitioners do not produce wheels for off-road use.²⁴ The *ITC Preliminary Report* notes that “Titan’s major business is in steel wheels larger than 24.5 inches in diameter” and that “the small-size end of Titan’s production range is the very largest of the range of the scope.”²⁵ As such, we find that Zhejiang Jingu’s aforementioned argument is based on an inappropriate comparison between manufacturers of different sized products. Furthermore, Zhejiang Jingu provides no evidence to demonstrate that Petitioners cannot, or do not, produce wheels that are 18 to 24.5 inches in diameter for use off-the-road.

The Department further disagrees with Blackstone/OTR’s contention that the Petition and ITC questionnaires only contemplate DOT-certified, on-the-road, wheels. While both the Petition and the ITC questionnaires discuss steel wheels for use on “commercial vehicles, *i.e.*, trucks, tractors, buses, trailers, fire trucks, ambulances, tow trucks, etc.,” neither distinguishes between on- and off-the-road usage. Furthermore, the Petition, the ITC questionnaire (*i.e.*, ITC Instruction Booklet), and the *ITC Preliminary Report*, all specifically note that the scope is “not based on use.”²⁶ Blackstone/OTR also alleges that, even as recent as their November 22, 2011, comments to the ITC, Petitioners made no effort to clarify that the scope includes non-DOT stamped wheels.²⁷ At that time, Petitioners did suggest new questions to specifically address whether respondents’ wheels meet DOT standards.²⁸ However, the questions are related to information gathering regarding U.S. purchasers of steel wheels, not PRC manufacturers and, as such, we do not find that the questions Petitioners submitted are in any way intended to exclude non-DOT stamped wheels from the scope.²⁹ Moreover, as stated above, the scope is not based on use, hence non-DOT stamped steel wheels are included within the scope and there was no reason for Petitioners to further clarify which merchandise was covered in its comments to the ITC. Furthermore, to date, the Department has not requested that respondents differentiate between DOT stamped wheels and NHS wheels when collecting FOP and sales information, nor did the Department instruct parties to report only DOT stamped wheels. Thus, the Department has fully accounted for all wheels produced by respondents that fall within the description of merchandise covered by this investigation, regardless of their intended end-use. Accordingly, for all of the reasons discussed above, we have not excluded off-road wheels from the scope of this investigation.

Additionally, as noted in the *AD Initiation Notice* (April 26, 2011), the Department uses physical characteristics of the merchandise under investigation for product matching and to help in tracking of relevant factors and costs of production. The Department prefers to define the scope with physical characteristics because reliance on an end-use application often results in ambiguity with respect to product coverage at the time merchandise enters the country, which is when CBP must determine whether the importer has properly classified the merchandise as subject or non-subject merchandise.³⁰ Neither Blackstone/OTR nor Zhejiang Jingu put any

²⁴ See Zhejiang Jingu’s Rebuttal to Petitioners Scope Comments at Exhibit 3.

²⁵ See *ITC Preliminary Report* at III-2.

²⁶ See Petition at I-4; Blackstone/OTR’s Case Brief at Exhibit 1 (ITC Instruction Booklet at page 5); and *ITC Preliminary Report* at I-7.

²⁷ See Blackstone/OTR’s Case Brief at 6 and Exhibit 2.

²⁸ See Blackstone/OTR’s Case Brief at Exhibit 2, pages 4-5.

²⁹ See *Id.*

³⁰ See *e.g.*, *Welded Steel Pipe/PRC* (June 5, 2008) and accompanying IDM at Comment 1 and *OTR Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 1.

defining physical characteristics on the record of this investigation to distinguish between on- and off-road wheels. Thus, the record does not contain sufficient evidence to demonstrate the existence of an actual physical or technical distinction between on-road and off-road products that would allow us to distinguish them from each other.

Finally, we do not agree with Blackstone/OTR's allegation that the DOT stamp on a wheel signifies that the wheel is only for on-road usage. According to DOT regulations, this stamp only certifies that "the rim complies with all applicable motor vehicle safety standards" and does not pertain to any technical specifications which would preclude the wheel from being used off-the-road.³¹ Similarly, in response to Blackstone/OTR's assertions, Petitioners noted that they put the DOT stamp on all of their steel wheels, regardless of potential end use.³² Moreover, while Zhejiang Jingu's assertion that Petitioners' warranties distinguish between off-road and on-road wheels may indeed speak to the intended end usage of the wheels, this warranty language does not identify or impart any further information that could be used to differentiate between on- and off-road wheels based on the Department's aforementioned criteria. Hayes Lemmerz specifically warrants all "on-highway disc wheel, demountable rim, or wide base wheel" for five years from date of manufacture and "all other wheel and rim products... for one year."³³ Though this description may help to distinguish between warranties applied based on the actual use of the wheel, it does not provide any technical or physical distinctions that identify whether a wheel can or cannot be used for either or both applications. In any event, the existence of the second warranty confirms that Petitioners operate in the off-road wheel market.

In response to the Department's request for scope comments, Jiaying Stone, a Chinese wheel manufacturer, stated that it produces steel wheels based on the requirements of its customers, without regard to DOT regulations.³⁴ Blackstone/OTR claims that DOT regulations "require that in order to be imported into the United States, the wheel rims must be marked with... '(c) The symbol DOT... {and} (d) A designation that identifies the manufacturer of the rim...,'" implying that there are regulatory measures in place to ensure that the imported wheels are certified for highway use by the original manufacturer.³⁵ However, the DOT regulations say nothing about the stamp being a requirement for importation of the wheels; only that "each vehicle equipped with pneumatic tires for highway service shall be equipped with... rims that are listed by the manufacturer of the tires as suitable for use with those tires" and that "{e}ach rim or... wheel disc shall be marked with the information listed...".³⁶ Petitioners claim that importers could simply import wheels without the DOT stamp free of AD duties, only then to

³¹ See Blackstone/OTR's Scope Comments at Attachment 1, 49 CFR § 571.120:

S2. *Purpose.* The purpose of this standard is to provide safe operational performance by ensuring that vehicles to which it applies are equipped with tires of adequate size and load rating and with rims of appropriate size and type designation, and by ensuring that consumers are informed of motor home/recreation vehicle trailer load carrying capacity.

S3. *Application.* This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds and motorcycles, to rims for use on those vehicles, and to non-pneumatic spare tire assemblies for use on those vehicles.

³² See Petitioner's Scope Comments at 4.

³³ See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 2.

³⁴ See Jiaying Stone's Scope Comments.

³⁵ See Blackstone/OTR's Case Brief at 7 and Blackstone/OTR's Scope Comments at Attachment 1 (49 CFR 571.120 at S5.2)

³⁶ See Blackstone/OTR's Scope Comments at Attachment 1 (49 CFR 571.120 at S5.1.1 and S5.2)

place the DOT stamp on the rim.³⁷ Although the regulation does not appear to impose any marking requirements for importation,³⁸ we find that this analysis in any event is not dispositive when considering the scope of the investigation. Specifically, as explained above, Petitioners have indicated that they manufacture steel wheels for on-road and off-road use and we find that the scope of the investigation, as contemplated by Petitioners, clearly intends to cover steel wheels regardless of use or DOT markings.

Finally, in Blackstone/OTR's Scope Comments, Blackstone/OTR disagreed with the Department's preliminary decision to add new HTSUS categories to the scope, claiming that it would inappropriately cover products which were not contemplated at the outset of the investigation.³⁹ We disagree with Blackstone/OTR's assertion that the addition of the HTSUS categories is inappropriate, for several reasons. First, as we state in the scope of all AD and CVD proceedings, the written description of the scope of the proceeding is dispositive of the merchandise covered by the respective investigation or order. The Department includes HTSUS numbers in the scope language as a convenience to CBP and the importing public. It is not unusual during the course of an investigation, or even after an order is put in place, for CBP to identify HTSUS numbers that may reflect merchandise covered by the narrative scope of the proceeding and to request that the Department add these numbers to its scope language. Thus, the additional HTSUS numbers do not affect, or increase, what merchandise is covered by the scope of the investigation, but rather are intended to reflect what is already covered based on the narrative description.

Comment 2: Whether Double Remedies Arise from the Concurrent CVD Investigation

- The GOC argues that, as a result of the *GPX CAFC* (Fed. Cir. 2011) ruling, U.S. CVD law cannot be applied to the PRC. Thus, the Department has no authority to pursue the CVD steel wheels investigation and should terminate the CVD investigation immediately.
- The GOC maintains that, so long as the CVD investigation continues, the application of the NME SV methodology in the AD investigation unlawfully imposes a double remedy that the Department must avoid in order to comply with the Federal Circuit's directive, as well as the U.S.'s obligations under the WTO. As such, should the Department refuse to terminate the CVD investigation, it should reject the application of third-country SVs and instead base NV on actual home country prices and costs for the instant final AD determination.⁴⁰
- Blackstone/OTR argues that, because the Department's NME methodology is designed to address the subsidization of foreign producers and NV is based upon a constructed price using unsubsidized SVs, should the Department ignore the CAFC's mandate not to impose

³⁷ See Petitioners' Rebuttal to Blackstone/OTR Scope Comments at 3 and Petitioners' Case Brief at 32.

³⁸ See Petitioners' Scope Comments at 2 and Exhibit 1, Zhejiang Jingu's Scope Comments at 2 and Exhibit 2, and Blackstone/OTR's Scope Comments at 2 and Attachment 1.

³⁹ See Blackstone/OTR's Case Brief at 2 and Blackstone/OTR's Scope Comments at 5.

⁴⁰ The GOC cites the following cases in support of its argument: *GPX 9/9* (CIT September 18, 2009) at 1234-35 and 1242-3, *GPX 8/10* (CIT August 4, 2010) at 1345, *GPX CAFC* (Fed. Cir. 2011) 666 F.3d at 17-26, *Preliminary Determination* (November 2, 2011) 76 FR at 67708-9, *CVD Preliminary Determination* (September 6, 2011) 76 FR at 55019-29, *Enriched Uranium/France* (August 3, 2004) 69 FR at 46505, and *WTO Appellate Report* (March 11, 2011) at Par. 541, Par. 582, Par. 583.

CVD on Chinese products, the Department must adjust its NME AD methodology so as to not apply double remedies in compliance with the U.S.'s obligations under the WTO.⁴¹

- Centurion asserts that, in the event the Department chooses to continue the CVD investigation, the Department must: a) forgo the imposition of CVDs, b) find a methodology to offset the double-counting, or c) offset any AD duties by the amount of CVDs imposed on the importation of the same goods.⁴²
- Zhejiang Jingu contends that, if the Department continues to apply both AD and CVD, it must ensure that its methodologies do not result in double counting. Zhejiang Jingu maintains that the margin calculations in the instant AD and CVD proceedings are driven by adjustments to its actual HRS costs, resulting in the same type of double-counting which the Department attempts to avoid in refraining from excluding AD duties from U.S. price.⁴³
- Petitioners argue that *GPX CAFC* (Fed. Cir. 2011): 1) is not final or controlling; 2) did not consider the double-counting argument from *GPX 9/9* (CIT September 18, 2009); and, 3) did not contemplate any alteration to the Department's AD methodology. Furthermore, Petitioners disagree with respondents' arguments regarding double-counting and point out that the Department has rejected double-counting arguments based on the CIT's *GPX 9/9* (CIT September 18, 2009) determination in many recent investigations, and request that the Department reject respondents' arguments on similar grounds herein.⁴⁴

Department's Position: As an initial matter, the Department disagrees with parties' contention that, as a result of the Federal Circuit's recent *GPX CAFC* (Fed. Cir. 2011) ruling, the Department has no lawful authority to pursue CVD investigations against China. The Federal Circuit's *GPX CAFC* (Fed. Cir. 2011) decision is not a final decision. Parties have sought rehearing of that decision and still have an opportunity to exercise additional appeal rights. Additionally, the court has yet to issue its mandate. Until a final decision is issued, the Department will continue to apply the CVD law to China based upon its determination that it is able to identify and measure countervailable subsidies in China. Also, Zhejiang Jingu, Centurion, Blackstone/OTR, and the GOC's reliance on *GPX I* (CIT September 18, 2009) and on *GPX II* (CIT August 4, 2010) in support of the argument that the Department must either

⁴¹ Blackstone/OTR cites the following cases in support of its argument: *GPX 8/10* (CIT August 4, 2010) at 1344-5, *GPX CAFC* (Fed. Cir. 2011) 666 F.3d at 4, *Georgetown Steel* (Fed. Cir. September 18, 1986) 801 F.2d at 1316, and *WTO Appellate Report* (March 11, 2011) at Par. 582, Par. 602, and Par. 605.

⁴² Centurion cites the following cases in support of its argument: *GPX 9/9* (CIT September 18, 2009) at 1243, *GPX 8/10* (CIT August 4, 2010) at 4, and *GPX CAFC* (Fed. Cir. 2011).

⁴³ Zhejiang Jingu cites the following cases in support of its argument: *GPX 9/9* (CIT September 18, 2009) at 1242-44, *GPX 8/10* (CIT August 4, 2010) at 1343, *GPX CAFC* (Fed. Cir. 2011), *PQ Corp.* (CIT January 27, 1987) 652 F. Supp. at 737, *Nucor* (Fed. Cir. July 7, 2005) 414 F.3d at 1336, *Chaparral* (Fed. Cir. April 17, 1990) 901 F. 2d at 1103-4, *C.J. Tower* (CCPA February 5, 1934) 71 F. 2d at 445, *Bethlehem Steel* (CIT October 14, 1998) 27 F. Supp. 2d at 208, *U.S. Steel* (CIT July 7, 1998) 15 F. Supp. 2d at 895, *AK Steel* (CIT December 1, 1997) 988 F.Supp. at 607-8 and note 12, *Hoogovens Staal* (CIT March 13, 1998) 4 F. Supp. 2d at 1220, *Wheatland* (Fed. Cir. July 25, 2007) 495 F.3d at 1362 and 1365-66, S. Rep. No. 67-16 (1921) at 4, *CVD Preliminary Determination* (September 6, 2011), *Cold-Rolled Flat Products/Netherlands* (April 15, 1997) 62 FR at 18485-6, *AFBs/Various Countries* (October 17, 1997) 62 at 54079, *Corrosion-Resistant Flat Products/Korea* (April 26, 1996) 61 FR at 18553, *Lead and Bismuth Steel/UK* (August 24, 1995) 60 FR at 44010, *Stainless Wire Rod/Korea* (April 12, 2004) 69 FR at 19159 and note 22, *SAA* (1994) at 885, H.R. 2528, 103rd Cong., 1st sess. 1993, H.R. Rep. No. 103-826(I) (1994) at 60-61, *GAO Report* (June 2005) at 33.

⁴⁴ Petitioners cite the following cases in support of their argument: *GPX 9/9* (CIT September 18, 2009), *GPX CAFC* (Fed. Cir. 2011), *Kitchen Racks/PRC* (July 27, 2009) and accompanying IDM at Comment 1, note 53, *OCTG/PRC CVD Prelim* (December 7, 2009) and accompanying IDM at Comment 2 and note 191.

immediately terminate the concurrent CVD investigation or correct for unlawful double-counting is misplaced. In those cases, the CIT held that the Department may not double count subsidies in NME cases and may not apply CVD law in NME cases without consideration of the double counting issue. However, because the Federal Circuit ruled on the separate threshold question of whether the Department may apply the CVD law to NMEs at all, we find parties' reliance on the CIT's opinions in *GPX I* (CIT September 18, 2009) and *GPX II* (CIT August 4, 2010) to be irrelevant to the instant determination.

However, even if *GPX I* (CIT September 18, 2009) and *GPX II* (CIT August 4, 2010) applied to the instant investigation, *GPX I* (CIT September 18, 2009) does not support the positions attributed to it by the parties above. *GPX I* (CIT September 18, 2009) did not find a double remedy necessarily occurs through concurrent application of the CVD law and AD NME methodology. Rather, *GPX I* (CIT September 18, 2009) held that the "potential" for such double counting may exist. The finding of a "potential" for double-counting in the *GPX I* (CIT September 18, 2009) decision does not mean that the Department must make an adjustment to its dumping calculations in this AD investigation. The SAA (1994) places the burden on the respondent to demonstrate the appropriateness of any adjustment that benefits the respondent.⁴⁵ In this case, the GOC and Zhejiang Jingu fail to demonstrate that there is actual double-counting for HRS inputs when the Department preliminarily determined that HRS was provided on a less-than-adequate-remuneration basis in the companion CVD investigation. The GOC and Zhejiang Jingu's argument does not provide any actual costs or prices but instead makes general theoretical arguments about the impact of this subsidy. While both parties used HRS inputs as an example, neither cited to actual costs or prices but, rather, only asserted that the HRS SV (for the AD investigation) and HRS benchmark price (for the CVD investigation) used by the Department was likely higher than the respondents' actual sulfuric acid costs. Therefore, the GOC and Zhejiang Jingu have not provided any evidence demonstrating how the CVD the Department found on HRS in the companion CVD case lowered NV in this AD LTFV investigation.

Furthermore, the Department disagrees with parties' assertion that concurrent application of CVD law and the AD NME methodology results in a double remedy. While the Act does not expressly address the issue of concurrent application of CVD law and the AD NME methodology, section 772(c)(1)(C) of the Act is instructive. Section 772(c)(1)(C) of the Act provides for an adjustment to the AD calculation to offset CVDs based on export subsidies. Section 772(c)(1)(C) of the Act, combined with the absence of any such corresponding

⁴⁵ See SAA (1994) at 829; 19 CFR 351.401(b)(1) ("The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the *amount* and nature of a particular adjustment." (emphasis added)); see also *Fujitsu* (Fed. Cir. 2006) 88 F.3d at 1034 (explaining that a party seeking an adjustment bears the burden of proving the entitlement to the adjustment).

adjustment to offset domestic subsidies, strongly suggests that Congress did not intend for any adjustment to offset domestic subsidies.⁴⁶

AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With the exception of section 772(c)(1)(C) of the Act, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

With respect to section 772(c)(1)(C) of the Act, the legislative history of the export subsidy adjustment establishes only that Congress considered it to satisfy the obligations of the United States under Article VI, Section 5 of the GATT. The legislative history does not suggest specific assumptions about whether foreign government subsidies lower prices in the United States, *i.e.*, contribute to dumping and, in fact, is not solely concerned with the effects of subsidies in the United States.⁴⁷ Thus, although the Act requires a full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings, it provides no basis for concluding that Congress's action was based on any specific assumptions about the effect of subsidies upon EPs. It may be simply that Congress recognized the complexity of the issues that would have to be resolved to provide anything less than a complete offset for export subsidies, and simply opted for a full offset to avoid those potential problems. Whether Congress considered the economic assumptions that might have been behind the failure of the GATT contracting parties to address domestic subsidies in Article VI, Section 5 of the GATT is not clear. In any event, all that the contracting parties may have assumed was that domestic subsidies had a symmetrical effect upon export and domestic prices. This presumed symmetrical impact may have been a *pro rata* or *de minimis* reduction in these prices. Thus, it is not correct to conclude that Congress assumed that the GATT contracting parties assumed that domestic subsidies lower EPs, *pro rata*, still less that Congress built any assumptions about the price effects of domestic subsidies into the AD law.

Parties argue that under the NME methodology, the Department compares the EP, presumably reduced by the domestic subsidies, to a NV that has been calculated using non-subsidized SVs.

⁴⁶ See *Central Bank of Denver*, 511 U.S. at 176-177 (“Congress knew how to impose aiding and abetting liability when it chose to do so. If, as respondents seem to say, Congress intended to impose aiding and abetting liability, we presume it would have used the words ‘aid’ and ‘abet’ in the statutory text. But it did not.”). See also *Blue Chip Stamps*, 421 U.S. at 723-734 (“When Congress wished to provide a remedy . . . it had little trouble in doing so expressly.”); *Franklin National Bank*, 347 U.S. at 378 (finding “no indication that Congress intended to make this phrase of national banking subject to local restrictions, as it has done by express language in several other instances”); *Meghrig* 516 U.S. at 485 (“Congress . . . demonstrated in CERCLA that it knew how to provide for the recovery of clean up costs, and . . . the language used to define the remedies under RCRA does not provide that remedy.”); *FCC*, 537 U.S. at 302 (when Congress has intended to create exceptions to bankruptcy law requirements, “it has done so clearly and expressly”); *Dole Food*, 538 U.S. at 468, 476 (Congress knows how to refer to an “owner” “in other than the formal sense,” and did not do so in the Foreign Sovereign Immunities Act’s definition of foreign state “instrumentality”); *Whitfield*, 543 U.S. at 216 (noting that “Congress has included an explicit overt-act requirement in at least 22 other current conspiracy statutes” but has not done so in the provision governing conspiracy to commit money laundering).

⁴⁷ See SAA (1994) at 412.

The argument that domestic subsidies inflate dumping margins by lowering EPs assumes that domestic subsidies in NME countries do not affect NV. However, while NME subsidies may not affect the SVs used to calculate NV in an NME proceeding, such subsidies may easily affect the quantity of factors consumed by the NME producer in manufacturing the subject merchandise. For example, a domestic subsidy in an NME country may enable a respondent to purchase more efficient equipment in turn lowering its consumption of ML&E. When the SVs are multiplied by the NME producer's lower factor quantities, they result in lower NVs and, hence, lower dumping margins.⁴⁸ Any reduction in factor usage by NME producers would reduce NV in a second manner, because the final cost of manufacture are also used to calculate the amounts for SG&A, and profit⁴⁹ that are additional components of NV. The GOC has argued that this position is theoretical and inaccurate because any new equipment purchases would result in a higher SG&A ratio. The Department disagrees, because applying the NME methodology is a complex calculation that takes into consideration many factors, such as the cost of capital and administrative expenses. Hence, additional equipment purchases do not necessarily result in a higher SG&A ratio as there are other factors which could impact the calculations.

Moreover, in determining NV in NME cases, the Department does not exclusively use factor quantities in the NMEs valued in the surrogate, ME country. Some factors' values are based on the prices of imported inputs (priced in the currency of the country from which the inputs were obtained or in U.S. dollars).⁵⁰ Given that the input suppliers in these countries are often competing with PRC suppliers of those same inputs, it is fair to conclude that those prices are influenced by subsidies in the PRC.

Finally, in some cases, the NME exports of the subject merchandise will account for a significant share of the world market, enough to influence world market prices. In such cases, particularly where the industry is export oriented or has excess capacity (as is often observed in the PRC), subsidies could increase output and exports from the PRC which, in turn, would reduce the prices of the good in question in world markets. These lower prices would reduce profits for producers selling in these markets which, in turn, would reduce the profit the Department derives from their financial statements (used as surrogates for the PRC producers) and, thus, reduce NV.

Parties argue that the AD NME methodology provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is necessarily duplicative. The general premise of this argument is that concurrent application of AD ME methodology and CVD law does not create automatic double remedies in ME proceedings because domestic subsidies automatically lower NV, and hence the dumping margins, *pro rata*. The AD NME methodology, on the other hand, produces a NV that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. The Department disagrees.

⁴⁸ See Section 773(c)(3) of the Act.

⁴⁹ See *e.g.*, *Hebei Metals* (CIT 2005) 366 F. Supp. 2d at 1277; see also *Dorbest* (CIT 2006) 462 F. Supp. 2d at 1300-01.

⁵⁰ See *Preliminary Determination*, 76 FR at 67713.

There are several reasons why subsidies in ME cases would not necessarily lower the NV calculated by the Department, *pro rata*, below what it would have been absent any subsidies. Subsidies can be accompanied with conditions attached that reduce the cost savings to the recipient below the nominal amount of the benefit received. For example, subsidy recipients may be required to retain redundant workers, maintain higher levels of production than would be optimal, remain in economically disadvantageous locations, reduce pollution, obtain supplies from favored sources, and so forth. Even if subsidies are unaccompanied by such requirements, it is not necessarily the case that they will contribute to a lower cost of production. For example, subsidies could be paid out as dividends, used to increase executive pay, or could also be wasted in any number of ways.

Further, the Act provides that NV in ME cases is to be based on home market prices, where possible. Where NV is based on home market prices, the relationship of subsidies to NV becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs uncertain but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third-country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly.

Finally, to the extent that domestic subsidies lower NV in ME cases, they may lower EPs commensurately, so that the dumping margins may not change. Thus, it is not safe to conclude that subsidies in MEs automatically reduce dumping margins, still less that they automatically reduce dumping margins, *pro rata*.

In *Kitchen Racks/PRC* and accompanying IDM at Comment 1 and *Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 2, the Department did not deduct domestic CVDs from U.S. prices because this would have resulted in the collection of total AD duties and CVDs that would have exceeded both independent remedies in full. The CAFC has upheld this position.⁵¹ Similarly, the Department's refusal to treat AD duties and safeguard duties as a cost in AD calculations reflects the Department's effort to collect these distinct remedies in full, but no more.

The Department has explained that the effect of domestic subsidies upon EPs depends on many factors (*e.g.*, the supply and demand for the product on the world market, and the exporting countries' share of the world market), and is therefore speculative.⁵² Thus, the Department has determined that domestic subsidies do not inevitably reduce EPs, *pro rata*.⁵³

In considering the impact of domestic subsidies upon EPs, the form of the subsidy is important because, like export subsidies, some domestic subsidies give domestic producers a greater incentive to increase production than others. A production subsidy (*e.g.*, raw materials at reduced prices) reduces the unit cost of producing that merchandise and, therefore, increases the producer's profit on sales of that merchandise. This may give the producer a commercial incentive to increase production of that merchandise. In an NME, however, it is not necessarily

⁵¹ See *Wheatland CAFC* (Fed. Cir. 2007) at 1358 (reversing *Wheatland* (CIT 2006)).

⁵² See *OTR Tires/PRC Prelim* (February 20, 2008) (unchanged in *OTR Tires/PRC Final* (July 15, 2008)).

⁵³ See *World Trade Report 2006 and Agricultural Policies and World Markets*, MacMillan Pub. Co., 1985.

the case that economic decisions are made on the basis of such market forces. In any event, more general subsidies (*e.g.*, general grants or debt forgiveness) would not provide that direct incentive. A foreign producer might use a general subsidy to modernize its plant, pay higher dividends, fund research and development, clean up the environment, make severance payments, increase the production of some other product, or waste the money. Consequently, this type of domestic subsidy will not necessarily result in any increase in production and, therefore, will not necessarily result in any reduction in EPs, still less an automatic *pro rata* reduction.

Even if a producer attempted to respond to a domestic subsidy exclusively by increasing production, it might not be able to do so, at least in the short or medium term. Various constraints (*e.g.*, limits on the supply of raw materials, energy, or transportation) might limit its ability to do so. Moreover, capacity expansion is time-consuming. Thus, it would be incorrect to claim that domestic subsidies automatically result in increased production.

Additionally, even if all producers in an NME country do respond to domestic subsidies by increasing production, it is an uncertainty that this increase would result in lower EPs. For example, if world market prices are increasing, it is an unrealistic assumption that an NME producer that receives a domestic subsidy will reduce its EPs by the full amount of the subsidy, as allocated under the Department's CVD methodology. Increased production and exports will tend to lower EPs *over time*, but this reduction will be neither automatic nor necessarily *pro rata*.

For example, in previous cases, the ITC has determined that some PRC producers raised their prices in line with world market prices, despite having received substantial subsidies.⁵⁴ Increased export sales will reduce the price of the subject merchandise on world markets only to the extent that the producer or producers in question supply a substantial share of the world market, so that the additional production will drive down prices in that market. Even this will take time and will not occur if other producers in the market reduce production to avoid a price war.

Congress established two separate remedies for what it evidently regards as two separate unfair trade practices. The only point at which the Act requires the Department to reconcile these separate remedies is in the adjustment of AD duties to offset export subsidies. Because neither AD nor CVD duties are concerned with economic distortion, as such, but are simply remedial duties calculated according to the detailed specifications of the Act, it follows that no overall economic distortion cap for concurrent proceedings can be distilled from the Act.

The GOC's reference to *Enriched Uranium/France* (August 3, 2004) is misplaced.⁵⁵ The Department's statement that, "domestic subsidies presumably lower the price of the subject merchandise in the home and the U.S. markets" does not stand for the firm proposition that domestic subsidies are always passed through into EPs, *pro rata*. This is no more than a presumption, and a very limited one. In *Enriched Uranium/France* (August 3, 2004), the Department noted that not all domestic subsidies are presumed to be fully passed through into

⁵⁴ See *Tires/PRC ITC Final Report (August 2008)* at IV-5 (Table IV-2), E-3 (Table E-1) and E-6 (Table E-4); see also *Circular Welded Carbon-Quality Steel Pipes/PRC ITC Preliminary Report (July 2007)* at V-12 ((Table V-3) V-14 (Table V-5), and V-19, showing rising AUVs on imports from the PRC for the years 2005-2007.

⁵⁵ See *Enriched Uranium/France*, 69 FR at 46501, 46505-06.

domestic and EPs, but that the effect of domestic subsidies on the price in each market presumably was the same. For example, the reductions in price could be one percent of the subsidy in each market.

The GOC and Blackstone/OTR cite to the *Appellate Body Report (WTO 2011)* as support that the WTO has determined that the application of CVD to the PRC while using the NME methodology is contrary to the United States' WTO obligations. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the *URAA* (1994) at 4809.⁵⁶ Congress adopted an explicit statutory scheme in the *URAA* for addressing the implementation of WTO reports.⁵⁷ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.⁵⁸ Moreover, as part of the *URAA* process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.⁵⁹ For this reason, the *Appellate Body Report (WTO 2011)* does not establish whether the Department's application of the AD NME methodology and CVD law in concurrent investigations results in double remedies or is consistent with U.S. law.

Lastly, contrary to its assertion, the *GAO Report* (June 2005) study cited by Zhejiang Jingu does not create any legitimate doubts about the Department's interpretation of the Act. While the *GAO Report* (June 2005) indicates that the Department has decided to not apply CVD law to NME firms and that this decision has been affirmed in *Georgetown Steel* as an initial matter,⁶⁰ we emphasize that the GAO does not administer AD and CVD laws and has no expertise in AD and/or CVD calculations. As explained *supra*, the Department has not determined to abstain from applying CVD law concurrently with the AD NME methodology. More importantly, the GAO did not decisively conclude that double counting occurs when CVD and AD NME methodology is applied. Instead, the *GAO Report* (June 2005) only states that double-counting may occur.⁶¹

Comment 3: Use of PT Prima Alloy's Financial Statement for Surrogate Financial Ratios

The Department has summarized below parties' comments based on comments received for each of the seven financial statements on the record:

⁵⁶ See *Corus Staal I* (Fed. Cir. 2005) 395 F.3d at 1347-49, cert. denied 126 S. Ct. at 1023, 163 L. Ed. 2d at 853 (Jan. 9, 2006); accord *Corus Staal II* (Fed. Cir. 2007) 502 F.3d at 1375 ; see also *NSK*; see also *OTR Tires/PRC* (April 25, 2011) and accompanying IDM at Comment 14.

⁵⁷ See 19 USC 3538

⁵⁸ See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

⁵⁹ See 19 USC 3533(g); see, e.g., *Final Modification for Antidumping Investigations*. With respect to the respondents' argument that the Department's actions are inconsistent with Section 19.3 of the *WTO Subsidies Agreements*, the Department disagrees for the reasons discussed above and further notes that a purported inconsistency with Section 19.3 of the *WTO Subsidies Agreements* is not a permitted basis on which to challenge the Department's actions under US law. See 19 USC 3512(c)(1).

⁶⁰ See *GAO Report* (June 2005) at 8.

⁶¹ See *id.* at 17.

Wheels India Limited and Steel Strips Wheels Limited, Indian steel wheel producers

- Zhejiang Jingu and Centurion support using the Indian financial statements submitted in the Petition because both companies produce merchandise identical to the subject merchandise.

PT Prima, an Indonesian wheel producer

- Zhejiang Jingu and Centurion object to the use of PT Prima's financial statement because: 1) PT Prima only makes aluminum wheels, which they claim are not comparable to steel wheels because the base metal and production processes are different, and 2) because of an accounting irregularity.^{62, 63}
- Centurion objects to the use of PT Prima's statement because it is insufficiently detailed (*i.e.*, it does not break out energy costs). Centurion alleges that, consequently, the Department was unable to calculate an overhead surrogate ratio based on the full cost of manufacturing.
- Petitioners urge the Department to continue to use PT Prima's statement to calculate surrogate financial ratios because it is a company located in the primary surrogate country and it produces merchandise that is identical or comparable to the subject merchandise.⁶⁴
- Petitioners aver that PT Prima's data is not deficient and the other financial statements are no better suited. Petitioners also assert that, contrary to Centurion's claim, the Department did compute an overhead rate inclusive of the full cost of manufacturing based on PT Prima's statement.
- Petitioners disavow Respondents' claim that PT Prima does not produce steel wheels, noting that PT Prima's financial statement indicates its scope of activities comprises the production of wheel rims and disks "made of aluminum alloy and steel."
- Petitioners note that the statute does not require the Department to find a producer of identical merchandise, but rather a producer of comparable merchandise. While steel wheels differ from aluminum wheels with respect to the base metal, they are very similar in other respects: same size and shape; same end use; physically interchangeable and directly substitutable; both are metal wheels for motor vehicles; the production process for both is highly automated; and producers of steel and aluminum wheels ordinarily purchase the base metal feed stock which is fed into production machinery.

Kedaung, an Indonesian can and kitchenware producer

- Centurion asserts that, alternatively, the Department should rely on Kedaung's statement since their production process is similar to that of steel wheels.
- Petitioners argue that the products Kedaung produces are far less comparable to subject steel wheels than the wheels produced by PT Prima.

⁶² Zhejiang Jingu cites to the following cases in support of its argument: *Persulfates/PRC* (February 14, 2006) and accompanying IDM at Comment 1, citing to *Pure Magnesium/PRC* (January 21, 1998) at 63 FR 3088; and *AD/CVD Proposed Rulemaking* (February 27, 1996) at 61 FR 7346.

⁶³ Centurion cites to the following cases in support of its argument: *Carbon and Alloy Pipe/PRC* (September 21, 2010) and accompanying IDM at Comment 6; 19 USC 1677b(c)(1); *MLWF/PRC* (October 18, 2011) and accompanying IDM at Comment 1; and *ITC Preliminary Report* at 7-8.

⁶⁴ Petitioners cite to the following cases in support of their argument: *FMTCS/PRC* (January 18, 2011), referencing 19 CFR 351.408(c)(2); *Preliminary Determination* (November 2, 2011); *Shrimp/Vietnam* (September 12, 2011) and accompanying IDM at Comment 2.J.; *Steel Wire Hangers/PRC* (October 28, 2011); *PET Film/PRC* (November 3, 2011); *Dorbest* (CIT 2006); 19 CFR 351.408(c)(4); *Blankets/PRC* (July 2, 2010) and accompanying IDM at Comment 2; and *Pencils/PRC* (July 25, 2002) and accompanying IDM at Comment 5.

Indospring, an Indonesian automotive spring and coil manufacturer

- Zhejiang Jingu and Centurion assert that, alternatively, the Department should rely on Indospring's statement since their production process is similar to that of steel wheels.
- Petitioners contend that the products Indospring produces are far less comparable to subject steel wheels than the wheels produced by PT Prima.

Siam Lemmerz, a Thai producer of aluminum wheels

- Zhejiang Jingu asserts that, if the Department rejects PT Prima's statement but determines that aluminum wheels are a relevant proxy for steel wheels, then the Department could use the statement of Siam Lemmerz, since Thailand is on the list of preferred surrogate countries, and because Siam Lemmerz's financial statement does not appear to contain "any of the accounting irregularities that undermine the reliability" of PT Prima's financial statement.
- Petitioners note that the Department prefers to use financial statements of companies in the primary surrogate country. Indonesia was chosen as the primary surrogate country, a decision no party has challenged. Hence, the Department should not consider the Siam Lemmerz financial statement.

JTEKT, a Thai producer of automotive parts (steering, bearings, clutch, and brakes)

- Centurion asserts that, alternatively, the Department should rely on JTEKT's statement, arguing that the experience of JTEKT best approximates Centurion.
- Petitioners contend that, because Indonesia was chosen as the primary surrogate country, the Department should not consider JTEKT's financial statement.

Department's Position: In selecting financial statements for purposes of calculating financial ratios, the Department's policy is to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."⁶⁵ In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the primary surrogate country to value manufacturing overhead, general expenses, and profit.⁶⁶ Although the regulation does not define what constitutes "comparable merchandise," it is the Department's practice to, where appropriate, apply a three-prong test that considers the: 1) physical characteristics; 2) end use; and 3) production process.⁶⁷ For the purpose of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's.⁶⁸ The Department, however, is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."⁶⁹ While the Department generally prefers to rely on more than one surrogate

⁶⁵ See e.g., *Pure Magnesium/PRC* (December 23, 2010) and accompanying IDM at Comment 2 and *Lined Paper/PRC Final* (September 8, 2006) and accompanying IDM at Comment 1.

⁶⁶ See *Shrimp/PRC* (September 12, 2007) and accompanying IDM at Comment 2.

⁶⁷ See e.g., *FSVs/PRC* (November 15, 2011) and accompanying IDM at Comment 1; *Blankets/PRC* (July 2, 2010) and accompanying IDM at Comment 2; and *Pencils/PRC* (July 25, 2002) and accompanying IDM at Comment 5.

⁶⁸ See e.g., *FSVs/PRC* (November 15, 2011) and accompanying IDM at Comment 1 and *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 13.

⁶⁹ See e.g., *FSVs/PRC* (November 15, 2011) and accompanying IDM at Comment 1; and *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 13, citing *Nation Ford* (Fed. Cir. 1999) 166 F.3d at 1377 and *Magnesium Corp.* (Fed. Cir. 1999) 166 F.3d at 1372.

financial statement, upon examining the seven financial statements on the record of this review and taking parties' arguments into consideration, we have determined that the financial statement of PT Prima represents the best information available for calculating surrogate financial ratios for the final determination of this investigation.

The Department has determined that aluminum wheels are a comparable product to steel wheels for the purpose of selecting a surrogate financial statement and calculating surrogate financial ratios in the instant case. First, both steel and aluminum wheels share the same physical characteristics; they are metal wheels for vehicles which have the same size and shape. Secondly, steel and aluminum wheels have the same end use; they are physically interchangeable and directly substitutable. Thirdly, both are produced in automated factories where a base metal feedstock is fed into production machinery.⁷⁰ While the *ITC Preliminary Report* does discuss significant differences between aluminum and steel wheels (notably, different base metals and a higher cost for finished aluminum wheels), it also notes that both aluminum and steel wheels are distributed through the same commercial channels and that aluminum wheels are perceived as a substitute for steel wheels.⁷¹ Thus, for the purpose of surrogate financial ratio calculation, the Department finds aluminum wheels to be a comparable product to steel wheels, since they pass the Department's aforementioned three-prong test for comparability.

In addition to producing aluminum wheels, PT Prima's financial statement also indicates that the company produces steel wheels. PT Prima's scope of activities, as described in its financial statement, "comprises the production of rim, stabilizer and other equipment made of aluminum alloy and steel."⁷² Furthermore, there is nothing on the record to suggest that PT Prima produces aluminum wheels exclusively, and does not produce any steel wheels. Additionally, PT Prima's annual report indicates that the company produces wheels which fall within the size-range of the scope of this investigation and that it is a significant exporter of wheels (with exports of \$31.9 million USD in 2010).⁷³ Thus, we consider PT Prima to be a producer of comparable, as well as identical, merchandise.

Centurion argues that PT Prima's financial statement is insufficiently detailed, asserting that, because PT Prima does not break out energy costs, the Department was unable to calculate an overhead surrogate ratio based on the full cost of manufacturing. However, for the *Preliminary Determination*, the Department used PT Prima's financial statement to determine factory overhead as a percentage of the total ML&E costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. When energy costs are not specifically broken out in a financial statement, the Department presumes that these costs are accounted for in the surrogate financial ratios.⁷⁴ Therefore, the Department was able to calculate an overhead surrogate ratio based on the full cost of manufacturing. Because PT Prima's statement does not separate out energy expenses, in order to not double count the respondents' energy costs, we have properly excluded

⁷⁰ See *ITC Preliminary Report* at 7.

⁷¹ See *id.* at 9.

⁷² See Petitioner's Surrogate Value Comments at Attachment 4, note 1 of PT Prima's Financial Statement.

⁷³ See Petitioner's Surrogate Value Comments at Attachment 4, pages 6 and 8 of PT Prima's Annual Report and Note 2 of PT Prima's Financial Statement.

⁷⁴ See *Citric Acid/PRC LTFV Final* (April 13, 2009) and accompanying IDM at Comment 2.

energy expenses from elsewhere in our NV calculations. We note that certain financial statements suggested by respondents for use in the alternative (*i.e.*, Kedaung, Siam Lemmerz, and JTEKT) similarly do not break out energy costs.

We disagree with Zhejiang Jingu's argument that PT Prima's statement is unusable due to accounting irregularities. Because PT Prima revalued its property, plant, and equipment in January 2010, Zhejiang Jingu contends that PT Prima's reported 2010 depreciation does not reflect actual depreciation, but rather an upward adjustment, thus making the surrogate financial ratio for factory overhead unreliable. However, PT Prima's depreciation schedule shows that the 2010 depreciation amounted to 24,498,005,882 IDR, of which 17,235,596,319 IDR was charged to operations (an amount similar to the 18,092,024,903 IDR in depreciation charged to operations in 2009) and the balance of 7,262,409,563 IDR was classified as revaluated surplus. Furthermore, note 18 specifies that revaluation reserves arising from the revaluation of land, buildings, and installations are transferred to retained earnings and, indeed, the 7,262,409,563 IDR balance appears in the statement of changes in stockholders' equity on page 4 of PT Prima's financial statement.⁷⁵ Based on the auditor's report, the change in accounting for property, plant, and equipment was made in accordance with generally accepted accounting principles in Indonesia.⁷⁶ Therefore, the Department finds that the "accounting irregularity" alleged by Zhejiang Jingu was merely the result of PT Prima having changed its method of accounting for fixed assets in 2010, which was appropriately accounted for, and does not provide sufficient reason to exclude PT Prima's financial statement for use in deriving our surrogate financial ratio calculations.

We note that PT Prima's statement is contemporaneous with the POI and does not display any accounting irregularities, nor does it indicate receipt of any subsidies which the Department has previously found to be countervailable. Furthermore, PT Prima is a producer of identical as well as comparable merchandise from the primary surrogate country. It is the Department's well-established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.⁷⁷ In the *Preliminary Determination*, the Department identified Indonesia as the primary surrogate country, a decision which no party has contested.⁷⁸ Accordingly, we have on the record of this investigation a reliable, complete, publicly available, fully translated, contemporaneous surrogate financial statement for PT Prima, a producer of wheels from the primary surrogate country whose experience is representative of respondents' experience. Thus, we find that respondents fail to provide sufficient reason to compel the Department to look beyond the surrogate country at the financial statements of the Thai producers.

⁷⁵ See Petitioner's Surrogate Value Comments at Attachment 4, page 4 ("Statement of Changes in Stockholders' Equity," shows 56,422,591,864 in "Revaluation reserve," which is the difference between the 63,685,001,427 IDR and 7,262,409,563 IDR shown under note 9 on page 22).

⁷⁶ See Petitioner's Surrogate Value Comments at Attachment 4, note 2 of PT Prima's Financial Statement at *a* and *g*.

⁷⁷ See *e.g.*, *FMTCS/PRC* (January 18, 2011), referencing 19 CFR 351.408(c)(2); *Shrimp/Vietnam* (September 12, 2011) and accompanying IDM at Comment 2.J.; *Steel Wire Hangers/PRC* (October 28, 2011) 76 FR at 66905.

⁷⁸ See *Preliminary Determination* (November 2, 2011).

Moreover, the Department does not consider the financial statements of the Indian steel wheel companies to be appropriate for use in the alternative because: 1) India was not on the list of potential surrogate countries identified as being economically comparable to the PRC for the purposes of this investigation,⁷⁹ and 2) the Indian financial statements are not contemporaneous with the POI.⁸⁰ With regard to the other Indonesian financial statements on the record, we find that these companies produce goods which are not comparable to steel wheels (*i.e.*, cans and kitchenware and automotive springs and coils). While Kedaung, JTEKT, and Indospring use steel as an input, neither product is used for the same purpose as steel wheels, nor are they the same shape, design, or thickness as steel wheels. Moreover, the markets for kitchenware and automobile parts are considerably different than the market for wheels, wherein aluminum and steel wheels directly compete for the same customers' business.⁸¹ For the reasons discussed above, we determine that aluminum wheels are significantly more comparable to steel wheels than cans, kitchenware, or miscellaneous automobile springs, coils, brakes, *etc.*

Aside from the aforementioned issues related to product comparability and primary surrogate country, the Department further identifies a number of issues with respect to the financial statements of Kedaung, Indospring, Siam Lemmerz, and JTEKT:

- Due to fire damage in August 2009, Kedaung's financial statement includes a significant expense wherein the company wrote off large losses from the fire and recorded a very large amount of income from payment of an insurance claim related to the fire.⁸² In past cases, we have declined to use statements where we have determined that profit ratios are negative or zero,⁸³ and find this to be a comparable situation since, if we were to exclude the "gain on insurance claim," Kedaung's statement would show a before-tax loss.
- Indospring's financial statement is missing the first two pages of the untranslated financial statement (the translated pages were provided, but we cannot trace them to an untranslated version).⁸⁴ It is the Department's practice not to use illegible or incomplete financial statements.⁸⁵ Furthermore, Indospring appears to be an integrated producer, as its subsidiary produces the raw material that Indospring uses in production, making its production process inconsistent with the respondents'.⁸⁶

⁷⁹ See *Preliminary Determination* (November 2, 2011); the Department identified Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine as being comparable to the PRC in terms of economic development and good candidates to serve as surrogate countries for this investigation.

⁸⁰ We note that contemporaneity is not necessarily a disqualifying factor, unless the Department other, more suitable information. In the instant case, we find that PT Prima's financial statement represents more suitable available information. See, *e.g.*, *Steel Wire Rod/Ukraine* (August 30, 2002) and accompanying IDM at Comment 1.

⁸¹ See *ITC Preliminary Report* at I-12: "aluminum wheels compete directly and aggressively with steel wheels for the same sales in the U.S. marketplace as a direct substitute... aluminum wheels have displaced significant volumes of steel wheel sales since their relatively recent introduction into the market."

⁸² See Zhejiang Jingu's Post-Prelim SV Submission at Exhibit 1.

⁸³ See *Silicon Metal/PRC* (January 19, 2011) and accompanying IDM at Comment 9 and *Shrimp/PRC* (September 12, 2007) and accompanying IDM at Comment 2.

⁸⁴ See Zhejiang Jingu's Post-Prelim SV Submission at Exhibit 2.

⁸⁵ See *e.g.*, *OTR Tires/PRC Final* (July 15, 2008) and accompanying IDM at Comment 17.A.

⁸⁶ See Zhejiang Jingu's Post-Prelim SV Submission at Exhibit 2. The Department has rejected financial statements for similar reasons in the past, see *e.g.*, *MLWF/PRC* (October 18, 2011) and accompanying IDM at Comment 1.

- Siam Lemmerz’s statement was poorly translated, as the translated version lacked most of the totals in the line items.⁸⁷ Furthermore, Siam Lemmerz’s financial statement does not segregate consumable materials, which are typically a component of factory overhead, from other raw materials used in production.⁸⁸ The Department has previously declined to use a financial statement where consumable materials were treated in a similar manner.⁸⁹
- JTEKT’s statement was poorly translated, as the translated version lacked most of the totals in the line items.⁹⁰ The Department has previously determined that it is important to examine the product mix and degree of vertical integration when selecting surrogate financial statements so that they are representative of the respondents’ production experience.⁹¹ In this case, JTEKT appears to be more vertically integrated and more engaged in selling of traded goods than the respondents in the instant investigation, thus, JTEKT’s production experience does not closely match the respondents’ experience.

Thus, we find PT Prima’s complete, fully-translated, contemporaneous, subsidy-free, publicly available financial statement from a producer of comparable and identical merchandise located in the primary surrogate country to be the best information on the record based on the Department’s stated surrogate financial statement selection methodology. Additionally, for the above-discussed reasons, we find that PT Prima represents a better match for the respondents’ experience than any of the other financial statements submitted to the record. As such, the Department continues to rely on PT Prima’s statement to calculate surrogate financial ratios for this final determination.

Comment 4: Surrogate Value for Pallet Inputs

- Centurion argues that the use of Indonesian import statistics for HTS category 4415.20 (“Pallets, Box Pallets And Other Load Boards Of Wood; Pallet Collars Of Wood”) to value pallet inputs for the *Preliminary Determination* resulted in an unreasonable valuation of pallets at prices exceeding hundreds of dollars per pallet. Centurion requests that the Department use price benchmarks from the other potential surrogate countries (*i.e.*, Thailand, Ukraine, the Philippines, and South Africa) to evaluate the reliability of the Indonesian value, and argues that these benchmarks are generally consistent (*i.e.*, corroborate one another) and, thus, demonstrate the Indonesian value to be highly aberrational.
- Furthermore, Centurion argues that the Indonesian HTS category is not specific to the pallet input used by the company, as Centurion’s pallets are made from plywood, and not the “solid wood” products covered by the HTS 4415 category. Centurion asserts that the Department should instead rely on Indonesian import data for HTS category 4412.99 (“Plywood, Veneered Panels And Similar Laminated Wood, Nesoi”) to value its pallet inputs or, alternatively, data for imports of HTS 4415.20 from one of the other potential surrogate

⁸⁷ See Zhejiang Jingu’s Post-Prelim SV Submission at Exhibit 3.

⁸⁸ See Zhejiang Jingu’s Post-Prelim SV Submission at Exhibit 3, page 36.

⁸⁹ See *PET Film/PRC* (November 3, 2011), 76 FR at 68142.

⁹⁰ See Zhejiang Jingu’s Post-Prelim SV Submission at Exhibit 4.

⁹¹ See *e.g.*, *MLWF/PRC* (October 18, 2011) and accompanying IDM at Comment 1, *Ironing Tables/PRC* (March 21, 2011) and accompanying IDM at Comment 1, and *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 13.

countries (stating a specific preference for Thai import data for HTS 4415.20, which is the largest producer of identical or comparable merchandise).⁹²

- Zhejiang Jingu also argues that the application of Indonesian import statistics for HTS category 4415.20 (Pallets, Box Pallets And Other Load Boards Of Wood; Pallet Collars Of Wood) to value pallet inputs for the *Preliminary Determination* resulted in an unreasonable valuation of pallet FOPs at prices exceeding hundreds of dollars per pallet. Zhejiang Jingu points to the recent *Citric Acid/PRC Prelim* (June 10, 2011) (unchanged in the *Citric Acid/PRC Final* (December 14, 2011)), in which the Department determined that the same Indonesian import data were aberrational and inappropriate to value pallet inputs, and instead relied upon Thai import data for the identical HTS category.
- Zhejiang Jingu argues that, for the *Preliminary Determination*, the Department incorrectly assumed that the import quantities and values for the Indonesian data were reported on a per-kilogram basis, whereas the Indonesian HTS does not actually designate a unit of measure for this category. Zhejiang Jingu concludes that the Department must reject the Indonesian data as unreliable, and should instead use Thai and Philippine per-kilogram values which: a) are from potential surrogate countries, b) corroborate one another, c) are of the same HTS, and d) show the Indonesian data to be flawed.⁹³
- Petitioners did not comment on this issue.

Department’s Position: We agree with Zhejiang Jingu and Centurion, in part. For the *Preliminary Determination*, the Department used data for Indonesian imports of HTS 4415.20 (Pallets, Box Pallets And Other Load Boards; Pallet Collars) resulting in a pallet SV of approximately \$8 USD per kg, finding it to be the best available information on the record at that time.⁹⁴ However, for the reasons explained below, we have determined to use data for Thai imports of HTS 4415.20 to value pallet inputs in these final results.

As an initial matter, we disagree with Zhejiang Jingu’s assertion that the Department incorrectly assumed that the import quantities and values reported in this Indonesian HTS heading are recorded on a per-kilogram basis, and that an excerpt of Indonesian HTS descriptions on the record “demonstrates definitely” that the Indonesian data do not report a unit of measure.⁹⁵ The source document in question, obtained from a 2007 publication of Indonesian HTS descriptions, merely lists the “descriptions of goods” included in each HTS category and subheadings (similar to the Tariff Schedule of Indonesia chart included at Attachment 1-1 of Petitioners’ Surrogate Value Comments or any number of other tariff schedules typically submitted in the Department’s AD proceedings, such as the HTSUS). This publication, as with any other tariff schedule, is merely a reference guide for HTS descriptions and contains no actual trade statistics. As such, it

⁹² Centurion cites the following cases in support of its argument: *Dorbest* (CIT 2006) 462 F. Supp 2d at 1279, *Citric Acid/PRC Final* (December 14, 2011) and accompanying IDM at Comment 12, *CVP 23/PRC* (November 17, 2004) and accompanying IDM at Comment 7, *Saccharin/PRC* (September 11, 2007) and accompanying IDM at Comment 2, *Hot-Rolled Steel Flat Products/Romania* (June 14, 2005) and accompanying IDM at Comment 2, *Peer Changshan* (CIT January 28, 2011) 752 F. Supp. 2d at 1372, and *TRBs/PRC Prelim* (July 13, 2011) 76 FR at 41209.

⁹³ Zhejiang Jingu cites the following cases in support of its argument: *Citric Acid/PRC Final* (December 14, 2011) and accompanying IDM at Comment 12, *Citric Acid/PRC Prelim* (June 10, 2011), and *Ferrovandium/PRC* (November 29, 2002) and accompanying IDM at 13 (citing *Wire Rope/PRC* (February 28, 2001)).

⁹⁴ See Preliminary SV Memo.

⁹⁵ See Zhejiang Jingu’s Case Brief at 5, citing to Zhejiang Jingu’s Post-Prelim SV Submission at Exhibit 5.

is not a source which would reasonably be expected to contain the unit of measure used to actually report trade data for any HTS category. Conversely, the GTA data used to value pallet inputs for the *Preliminary Determination*, which are comprised of officially reported trade statistics, do include a definitive quantity unit of measure (*i.e.*, kilograms),⁹⁶ and there is no evidence on the record that would call into question the validity of this information. While the aberrational nature of the Indonesian per-unit price (as discussed below) would lend credence to Zhejiang Jingu’s conjecture that the unit of measure for these trade statistics may be misreported in some manner, this concern is mere speculation and is not supported or substantiated by actual record evidence.

Moreover, we disagree with Centurion’s argument that HTS category 4415.20 is not specific to the company’s pallet inputs, which are made from plywood not solid wood, and HTS category 4412.99 (“Plywood, Veneered Panels And Similar Laminated Wood, Nesoi”) is more appropriate for use in the alternative.⁹⁷ A wooden pallet, whether solid wood or plywood, is a manufactured product and, as such, the product’s value consists of not only multiple raw material inputs (which include wood of various sizes, nails and/or other fasteners or adhesives used to construct the finished pallet, along with various other types of materials depending on the exact product⁹⁸), but all other costs involved in constructing the finished product. Centurion provides no comment to explain how a broad-based category for a single pallet raw material input (*i.e.*, plywood) is more specific to the product in question than an HTS category which clearly includes the actual finished product in its description (*i.e.*, pallets) and, further, fails to provide adequate reasoning that would compel the Department to use the plywood SV in the alternative. Moreover, Centurion provides no record information, only argument, to support its claim that the “wood” products included in the 4415.20 HTS category are exclusive of plywood products, and this conjecture is directly contradicted by actual HTS definitions of the 4415.20 category.⁹⁹

Nevertheless, in certain instances, the Department has disregarded import data where record evidence demonstrates that per-unit values are aberrational with respect to the product at issue or the time period in question. The Department determines whether data are aberrational on a case-by-case basis after considering the totality of the circumstances.¹⁰⁰ To test the reliability of the SVs alleged to be aberrational, the Department’s standard practice is to compare the selected SV for the FOP in question to the AUVs calculated for the same period using data from the other surrogate countries the Department designated for the review, to the extent that such data are

⁹⁶ See Preliminary SV Memo at Attachment III.

⁹⁷ Centurion’s Case Brief at 3-7.

⁹⁸ Indeed, Centurion’s own proprietary submissions suggest that not all of its pallet inputs are made entirely of wood and nails, and may include considerably more expensive raw materials. Centurion’s Post-Prelim Factual Submission at Exhibit 2 and 3. See Final SV memo for further analysis, including a discussion of the proprietary information.

⁹⁹ The Indonesian HTS identifies a plywood-specific eight-digit subheading of the six-digit 4415.20 category in question: 4415.20.10 (“Pallets, Boxpallets And Other Load Board Of Plywood”). As such, all pallets (including those made of both solid wood and plywood) appear to be properly included within the broader basket six-digit SV selected for the *Preliminary Determination*.

¹⁰⁰ See *e.g.*, *LWTP/PRC* (October 2, 2008) and accompanying IDM at Comment 10.

available.¹⁰¹ In the instant proceeding, Centurion has provided a comparison of the GTA import data for the identical 4415.20 HTS category from all potential surrogates, aside from Colombia.¹⁰² Centurion did not include Colombian import data, arguing that Colombia was not a significant exporter of products under the primary steel wheels 8708.70 HTS category, indicating that Colombia is not a significant producer of identical or comparable merchandise. Centurion argues that these data, which Centurion converted into a standard per-piece AUV using the average pallet weight of its own pallet inputs (where applicable), demonstrate that the Indonesian HTS 4415.20 AUV is 1386 to 4348 percent higher than the AUV for imports under same HTS from all other potential surrogates (*i.e.*, Thailand, Ukraine, Philippines, and South Africa).¹⁰³

For the purpose of this final determination, the Department has conducted its own analysis of GTA data for imports of HTS 4415.20 from each potential surrogate in comparison with the Indonesian value.¹⁰⁴ Because the datasets from certain countries were reported on a per unit basis and others on a per kilogram basis, we used Centurion's reported average per-piece pallet weight to convert the data into a uniform standard for comparison.¹⁰⁵ This analysis demonstrates that, indeed, the Indonesian AUV of \$7.96 per kilogram is between 1470 percent and 3831 percent higher than all other benchmarks on the record.¹⁰⁶ Moreover, the majority of these benchmark values exhibit a considerable degree of consistency among each other. The AUVs of the Thai, Ukrainian (which was reported in both per kg and per piece units of measure and separated for the purposes of this analysis), and Philippine surrogates ranged from \$0.42 to \$0.54 per kg, as reported, whereas the per unit AUVs from the Ukraine and South Africa ranged from 5.46 USD to 14.22 USD per piece, as reported. When converted into a standard unit of measure based on Centurion's reported average per unit pallet weight, the benchmark AUVs ranged from \$0.21 to \$0.54 per kilogram and \$5.46 to 14.22 per piece.¹⁰⁷ When compared to the AUV of the Indonesian HTS data, we find this range of benchmark AUVs to be a more reasonable estimation of the range of prices a ME firm would expect to encounter in sourcing the specific type of pallet inputs used by respondents.

As such, we agree with respondents that, on its face, the pallet value of over \$200 per piece represents an unreasonable surrogate from which to fairly value respondents' production

¹⁰¹ See *Hot-Rolled Steel Flat Products/Romania* (June 14, 2005) and accompanying IDM at Comment 2. See also, *LWTP/PRC* (October 2, 2008) and accompanying IDM at Comment 10, stating that the AUV prices for similar basket categories from other potential surrogate countries may be viable benchmarks without reference to the surrogate country determination.

¹⁰² See Centurion's Case Brief at 4-5, citing to the GTA-sourced surrogate value information provided in Zhejiang Jingu's Post-Prelim SV Submission at Exhibit 5 and Centurion's Post-Prelim SV Submission at Exhibit 6.

¹⁰³ See *id.*

¹⁰⁴ See Final SV Memo. Although the Department ultimately selected Indonesia as the primary surrogate country in the *Preliminary Results*, all potential surrogates, including Colombia, were found to be significant producers of identical or comparable merchandise. See *Preliminary Results* 76 FR at 67709; see also Preliminary SV Memo. As such, we disagree with Centurion's argument that Colombian import data should be excluded from this benchmarking analysis. However, because Colombian import data for HTS 4415.20 has not been submitted onto the record of this proceeding, only data from the Ukraine, South Africa, Thailand, and the Philippines have been considered for the purposes of the Department's benchmarking analysis for this final determination.

¹⁰⁵ See Final SV Memo.

¹⁰⁶ See *id.*

¹⁰⁷ The AUV range between the largest three importers (Thailand, the Philippines and the Ukraine) was even more consistent, with a per kg range between \$0.42 and \$0.54 and a per unit range between \$10.94 and \$14.22. See *id.*

experience with respect to this FOP, and that appropriate benchmarking data on the record support finding the Indonesian value to be aberrational. Therefore, consistent with our decision for the identical SV in a recent determination,¹⁰⁸ we have instead used Thai data for HTS 4415.20 category as a surrogate to value pallet inputs, as this data is tax exclusive, publicly available, representative of the input in question, contemporaneous with the POI, and represents a complete dataset from a economically comparable country.¹⁰⁹ We find Thai data for HTS 4415.20 to be preferable to the Philippine data for the same HTS also suggested for use in the alternative, as the Thai data comprise a more complete dataset than that of the Philippine import information.¹¹⁰ Furthermore, we have not averaged the two datasets, as it the Department's standard practice to values factors from a single country.

Comment 5: Inland Truck Freight Surrogate Value

- Jingu states that the data used to value domestic truck freight for the *Preliminary Determination* are sourced from one freight provider for one POI month and grossly distort the valuation away from Jingu's actual domestic truck freight costs. Jingu argues that the Department must use a more reasonable SV source for the final determination, such as one of the price quotes from Indonesian freight service providers placed on the record by Jingu and Centurion.¹¹¹
- Centurion contends that because the data used to value domestic truck freight for the *Preliminary Determination* are obtained from a third-party website rather than directly from the freight provider and are not based on a full-container load, this SV is un-representative of the manner in which Centurion incurs its domestic truck freight expense. Centurion claims the Department should instead value truck freight using the rate table available directly from the freight provider's website, as provided in Centurion's surrogate value submission, and should calculate the expense on the basis of a full container load.¹¹²

Department's Position: For this final determination, the Department has continued to use PT Mantap's data to value inland truck freight, but has sourced the data directly from PT Mantap's website, and has calculated the value using the average of price data for 8-ton and 15-ton truck loads.¹¹³

In the *Preliminary Determination*, the Department valued truck freight using rate quotes from PT Mantap, as listed on www.indonetwork.net. We disagree with Centurion's assertion that the PT Mantap quotes used in the *Preliminary Determination* constitute data from a third party website, as the quotes appear to be on a webpage that is hosted by a third party but owned and controlled by PT Mantap and contains contact information for PT Mantap.¹¹⁴ Nonetheless, we agree with

¹⁰⁸ See *Citric Acid/PRC Prelim* (June 10, 2011) (unchanged in *Citric Acid/PRC Final* (December 14, 2011)).

¹⁰⁹ See Final SV Memo.

¹¹⁰ Thai import data was representative of a significantly higher quantity of imports from over twice as many ME countries when compared with the Philippine dataset. See Final SV Memo for further analysis.

¹¹¹ Jingu cites to the following in support of its argument: Centurion's Post-Prelim SV Submission at exhibit 4.

¹¹² Centurion cites to the following in support of its argument: Preliminary SV Memo at 10 and attachment XI; Centurion's Post-Prelim SV Submission at exhibits 1-5; Centurion's CEP Verification Report at exhibit 12; and Zhejiang Jingu's Post-Prelim SV Submission at exhibit 7.

¹¹³ See Final SV Memo.

¹¹⁴ See Preliminary SV Memo at attachment XI.

Centurion’s assertion that the quotes used in the *Preliminary Determination* were for less than a full load (*i.e.*, were on a per-kg basis with a minimum shipment weight of 50-200 kgs, depending on the destination) and thus did not match the experience of the respondents, who ship their products in full container loads.

After the *Preliminary Determination*, Centurion placed publicly available freight quotes for full truck loads from PT Mantap’s new website on the record, as well as privately distributed freight quotes, reported on a per-container basis, from the Indonesian shipping company Chasana. Both the updated PT Mantap and Chasana quotes contained shipping terms. Centurion also placed two emails on the record containing privately distributed freight quotes, one for truck freight to two destinations, which does not specify the shipping terms, and the other indicating that it was for transport via “all water or water & truck.” Also after the *Preliminary Determination*, Jingu placed a single, publicly available freight quote on the record which: a) does not contain shipment terms (including the origination point of the cargo); does not clearly identify that it is exclusive to truck freight (*i.e.*, the quote reads “By Land & Sea”); and c) includes only a single usable data point for which there is a kilometer distance on the record from the *Preliminary Determination* (based on the relevant 20 foot container information). Because the emailed price quotes provided by Centurion and the single price quote provided by Zhejiang Jingu do not clearly indicate shipping terms or freight mode, we find that these quotes do not represent the most specific information on the record, and, based on the Department’s SV criteria,¹¹⁵ we determine the price quotes from PT Mantap and Chasana represent the broadest-market data on the record.

For these final results, the Department finds that the truck freight information from PT Mantap’s website is preferable to the information obtained from Chasana because: 1) PT Mantap’s information is available in the public domain, whereas Chasana’s quote was solicited via email and is not in the public domain, and 2) PT Mantap’s quote allows the Department to value truck freight using information available in the public domain. Therefore, for this final determination, the Department has calculated the inland truck freight SV using the average of prices for 8-ton and 15-ton truck loads from the price list published on PT Mantap’s website, as submitted by Centurion.¹¹⁶

Comment 6: Critical Circumstances

- Petitioners initially argued that certain shipment data for a single month, as submitted by Centurion, should not be considered for the Department’s critical circumstances determination, as they appear to be aberrant and unreliable. However, subsequent to the

¹¹⁵ See Section 773(c)(1) of the Act; see also *e.g.*, *CTL Plate/Romania* (March 15, 2005) and accompanying IDM at Comment 1.

¹¹⁶ See Final SV Memo.

submission of a correction to this monthly shipment information,¹¹⁷ Petitioners submit that their concerns with the aberrationality of this information are resolved and argue that the correction further supports an affirmative critical circumstance finding for Centurion.

- Petitioners further argue that, though they believe an analysis of either the four or six month comparison period supports an affirmative finding, the Department should not expand the comparison period for the critical circumstances determination to consider shipment data for September and October 2011, as this would be inconsistent with the statutory history for critical circumstances analysis.¹¹⁸
- Subsequent to the release of the Department’s Factual Information Clarification Memo, Centurion clarified that the aforementioned monthly data was, indeed, the result of a typographical error and confirmed that the Department properly corrected and verified this information.

Department’s Position: Pursuant to section 733(e)(1)(B) of the Act, the Department’s critical circumstance findings are based on an analysis of whether imports into the United States of the merchandise covered by the petition have been massive over a relatively short period of time. Section 351.206(i) of the Department’s regulations defines “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later (*i.e.*, the comparison period). The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

Based on the March 30, 2011, filing date of the Petition, April 2011 was selected as the first month in which importers, exporters or producers could have, or should have, known an AD duty investigation was likely in the instant proceeding.¹¹⁹ Accordingly, the Department used a four month period (*i.e.*, April through July 2011) as the period for comparison for our *Preliminary Determination*, because we believed a four-month period properly reflects the “relatively short period” set forth in the statute.¹²⁰ However, the Department also pointed out that the four month comparison period used in the *Preliminary Determination* captured all data available on the record at the time, and noted our practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.¹²¹ We then compared Centurion’s shipment data during the comparison period with the base period (*i.e.*,

¹¹⁷ Upon receipt of Petitioners’ Case Brief, which made reference to one month of “aberrant” shipment data in Centurion’s November 14, 2011, Updated Monthly Shipment Submission, the Department realized that it had previously received information correcting this typographical error during the verification of Jining Centurion, but inadvertently excluded this information from Centurion’s EP Verification Report. As such, the Department provided the corrected data in the January 23, 2011, Factual Information Clarification Memo, which also notified parties of the opportunity to comment on this additional factual information. Petitioners provided comments on this issue in their January 25, 2012, Response to Clarification of Factual Information Memo, whereas Centurion incorporated comments into its January 25, 2012, Rebuttal Case Brief. Neither party provided rebuttal comments.

¹¹⁸ Petitioners cite the following cases in support of their argument: *Preliminary Determination* 76 FR at 67707, *CVD Preliminary Determination* (September 6, 2011), H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979), and *AD Manual* (2009) at Chapter 16 (*sic*) (the Department notes that the *AD Manual* (2009) discusses critical circumstances in Chapter 12).

¹¹⁹ See “Critical Circumstances” section of the *Preliminary Determination*.

¹²⁰ See *id.*

¹²¹ See *id.*, citing to, *e.g.*, *Shrimp/India Prelim* (August 4, 2004) (unchanged in *Shrimp/India Final* (December 23, 2004)); and *Television Receivers/China* (April 16, 2004), and accompanying IDM at Comment 3.

December 2010 through March 2011) and found that imports of Centurion’s subject merchandise in the comparison period have increased by more than 15 percent over imports in the base period; thus, we considered imports of Centurion’s subject merchandise to be massive, pursuant to section 351.206(h) of the Department’s regulations, and considered the dumping margin sufficient to impute knowledge of dumping. As such, the Department made an affirmative preliminary determination of critical circumstances.¹²²

We disagree with Petitioners’ assertion that the expansion of this comparison period to include an analysis of the September and October 2011 information is inconsistent with the statutory history of the critical circumstances provision. As noted above, the Department’s stated practice in critical circumstance findings is to “examine the longest period for which information is available up to the date of the preliminary determination.”¹²³ While the four month periods before and after the month of the petition may often be used as a typical baseline for this analysis (as in the *Preliminary Determination*), this is generally due to the four month period being the most recent shipment data available at the time when the Department requests information for the purpose of its preliminary analysis, and not a result of any stated practice of the Department to only use four months of data. Subsequent to the *Preliminary Determination* in the instant proceeding, the Department requested and respondents provided updated monthly shipment quantity and value information for the period September 2010 through October 2011.¹²⁴ Based on this updated information, the Department continues to find affirmative critical circumstances for Centurion.¹²⁵

Comment 7: Treatment of Administrative Expenses in Centurion’s ISE Calculation

- Petitioners contend that Centurion USA incorrectly excluded from ISE certain payments made to the company owners. Petitioners note that these payments were recorded in the company’s books in an account captioned “Incentive pay: Admin” and therefore should be properly considered ISEs incurred by Centurion USA and should be included in the calculation.
- Furthermore, Petitioners assert that Centurion was incorrect to exclude a portion of certain administrative personnel’s salary and the corresponding payroll taxes from the numerator of the ISE ratio calculation because Centurion included the value of all Centurion USA’s sales

¹²² See *id.*; see also Preliminary Critical Circumstances Memo at Attachment 1.

¹²³ See e.g., *Sawblades/Korea* (May 22, 2006) and accompanying IDM at Comment 9, stating “Regarding section 735(a)(3)(B) of the Act, Ehwa argues that the Department should revise its base and comparison periods from five to six month periods, pursuant to its normal practice. Ehwa is correct that it is the Department’s normal practice to examine the longest period for which information is available up to the date of the preliminary determination, which frequently consists of six month base and comparison periods.” See also *Orange Juice/Brazil* (January 13, 2006), 71 FR at 2186; *Television Receivers/PRC* (April 16, 2004) and accompanying IDM at Comment 3; *Silicon Metal/Russia* (February 11, 2003), 68 FR at 6888; and *Refrigerators/Korea Prelim* (November 2, 2011) 76 FR at 67687.

¹²⁴ See Request for Centurion’s Monthly Shipment Information, Request for Zhejiang Jingu’s Monthly Shipment Information, Centurion’s Updated Monthly Shipment Submission, and Zhejiang Jingu’s Updated Monthly Shipment Submission. The Department requested the most recent shipment data available up to the month of the *Preliminary Determination* (i.e., October 2011), effectively expanding the comparison period by three months. As such, we expanded the corresponding base period to include imports back to September 2010 (i.e., a similar three month expansion).

¹²⁵ See Final Critical Circumstances Memo at Attachment 1.

in the denominator of the calculation and, as such, the numerator should include all of Centurion USA's SG&A and ISE expenses.¹²⁶

- Centurion claims that the payments to owners are properly excluded from ISE as either dividend payments or as a bonus that is normally included in the G&A expenses. Centurion claims that these payments represent an unusual one-time payment to company owners that was in the nature of a dividend distribution and, thus, should be excluded as a dividend distribution. Centurion further argues that, should the Department not consider this expense a dividend payment, it should instead be considered a bonus paid to management. Centurion, citing to *Swine/Canada* maintains that the Department considers bonuses paid to management as G&A expenses not related to sales, and, as such, the bonuses paid by Centurion are G&A expenses and should not be double-counted as an ISE.
- With regard to Petitioners' argument that certain salary and payroll tax expenses were incorrectly allocated out of the ISE ratio's numerator, Centurion points out that the denominator of the ratio indeed reflects all of Centurion USA sales, which include only sales to the North American market. However, the payroll expenses excluded from the numerator reflect the time spent by certain Centurion USA personnel which is devoted to supporting the export activities of its affiliated Chinese producer/exporter, Jining Centurion, to markets other than North American markets. As such, since the denominator includes only North American sales, Centurion asserts that the selling expenses related to sales other than sales to North American markets are properly excluded from the numerator of the calculation.¹²⁷

Department's Position: We find that the record does not support Centurion's claim that payments made to company owners constitute a dividend distribution. As noted in our verification report,¹²⁸ no documents were provided by Centurion to show that the payments were in fact dividends. In addition, these expenses were recorded on the financial statements as "Incentive pay: Admin," indicating that the payments represent additional compensation to the owners rather than dividends. We further disagree with Centurion's argument that even if the Department does not consider this expense to be a dividend payment, such bonuses paid to management are not related to Centurion's sales and, therefore, should be considered G&A expenses and excluded from the ISE. In this regard Centurion's reliance on *Swine/Canada*, where the Department treated payments to company owners as part of G&A expenses, is misplaced. In *Swine/Canada*, the respondent was a producing company involved in both production and selling activities. In cases where a U.S. affiliate involved in CEP sales is also a manufacturer, the Department may exclude from ISE the G&A expenses associated with the U.S. affiliate's manufacturing operations.¹²⁹ However, in the instant case, Centurion USA is engaged only in selling activity and, thus, any compensation paid to management is, at a minimum, indirectly related to Centurion's selling functions and, thus, properly included in the ISE. As such, we have adjusted Centurion's reported indirect selling calculation to reflect the inclusion of these payments.¹³⁰

¹²⁶ Petitioners cite the following cases in support of their argument: *Steel Beams/Italy* (May 20, 2002) and *Tomatoes/Canada* (February 26, 2002).

¹²⁷ Centurion cites to the following case in support of its argument: *Swine/Canada* (March 11, 2005) and accompanying IDM at Comment 67.

¹²⁸ See Centurion's CEP Verification Report at 18-19. See also, Centurion's CEP Verification Exhibit Submission at Exhibit 17.

¹²⁹ See *Activated Carbon/PRC* (November 10, 2009) and accompanying IDM at Comment 5.b.

¹³⁰ See Centurion's Final Analysis Memo for the Department's adjustment to the reported ISE calculation.

We disagree with Petitioners' assertion that all Centurion's SG&A expenses should be included in the ISE because Centurion used the total POI sales revenue as the denominator for the ISE ratio. We note that the excluded salaries and corresponding payroll taxes represent expenses incurred by Centurion USA to support export activities of the affiliated Chinese company Jining Centurion to markets other than North America.¹³¹ The Department's regulations state that "In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States..."¹³² Because the excluded expenses relate to Jining Centurion's sales to markets other than North America, such activities and the corresponding expenses are not associated with commercial activities in the United States and should not be included in the ISE. Therefore, we find that the denominator for the ISE calculation (*i.e.*, the value of all North American sales) has been properly reported on the same basis as the numerator (*i.e.*, all expenses directly related to North American indirect selling activities).

Comment 8: Hot-Rolled Steel Surrogate Value

- Zhejiang Jingu states that it only purchased and consumed domestically-sourced HRS for its rim and disk inputs which lacked a certain type of processing which is standard in commodity steel products exported between countries. Zhejiang Jingu asserts that the Indonesian import categories used by the Department to value these FOPs for the *Preliminary Determination* reflect steel which includes this type of processing. Zhejiang Jingu provides a percentage estimate of the price difference between steel which typically includes this processing and steel that does not. Zhejiang Jingu maintains that the use of SVs which include this processing effectively double-count the inputs used by Jingu to perform similar processing on its domestically sourced steel. Zhejiang Jingu suggests that the Department instead value its rim and disk HRS inputs using POI-AUVs for "Hot Rolled Coil (HRC) Mild Steel/Low Carbon Steel" obtained from the *Steel Indonesia* publication.¹³³
- Petitioners point out that, because rims and disks are not produced from steel of the same thickness, the HRS SVs used for the *Preliminary Determination* allow for the valuation of distinct rim and disk inputs using distinct values, consistent with the production experience reported by respondents, whereas the *Steel Indonesia* value suggested by Zhejiang Jingu would result in the use of a single, less-specific SV for the two distinct inputs. With regard to Zhejiang Jingu's assertion that there is no indication that the steel included in the Indonesian categories does not have the processing in question, conversely, Petitioners point out that there is no indication that the steel included does contain this processing and, furthermore, the *Steel Indonesia* data similarly provides no indication as to the level of processing of the products included therein.
- Moreover, Petitioners assert that the Indonesian SVs used for the *Preliminary Determination* are: a) product specific (*i.e.*, matches the steel input width and thickness for each input), b) based on actual transactions representative of broad market averages, c) contemporaneous, d) exclusive of taxes and import duties, and e) based on official government statistics. On the

¹³¹ See Centurion's CEP Verification Report at 18 and Verification Exhibit 17.

¹³² See 19 CFR 351.402(b).

¹³³ Zhejiang Jingu cites to the following case in support of its argument: *Rhone Poulenc* (Fed. Cir. 1990) 899 F.2d at 1191.

contrary, Petitioners contend that *Steel Indonesia* does not disclose the source of the values contained therein and, thus, does not indicate whether its prices are broad market averages representative of actual tax-exclusive transactions between MEs. As such, Petitioners request that for the final determination, the Department continue to value HRS inputs using the Indonesian import data it used for the *Preliminary Determination*.¹³⁴

Department’s Position: We agree with Petitioners. In the *Preliminary Determination*, the Department valued HRS inputs using Indonesian imports under HTS heading 7208.37 (“Flat-rolled Products Of Iron Or Non-alloy Steel, Width Of 600mm Or More, In Coils, Hot-rolled Worked Only, Of A Thickness 4.75mm But Not Over 10mm, Nesoi”) for rim HRS inputs and HTS 7208.36 (“Flat-rolled Products Of Iron Or Non-alloy Steel, Width Of 600 Mm Or More In Coils, Hot-rolled Worked Only, Of A Thickness Exceeding 10 Mm, Nesoi”) for disk HRS inputs, each valued at approximately \$0.80/kg. When selecting SVs with which to value the FOPs used to produce subject merchandise, the Department is directed to use the “best available information” on the record.¹³⁵ The Department’s preference is to use, where possible, publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference for data from a single surrogate country.¹³⁶ Furthermore, the Department frequently relies on period-wide import statistics obtained from GTA for the purposes of valuation, as the data reported therein are publicly available, non-export, tax-exclusive, and product-specific and further compliant with the Department’s preference to use values representative of country-wide information¹³⁷ and industry-wide values, rather than the values of a single producer.¹³⁸ Moreover, the Department does not use price data without adequate supporting documentation.¹³⁹

Zhejiang Jingu argues that the Indonesian import categories used by the Department to value the HRS FOPs for the *Preliminary Determination* “reflect hot-rolled steel which is” inclusive of a particular type of proprietary processing and that the narrative HTS descriptions of the categories provide no indication that the steel included does not contain this type of processing.¹⁴⁰ As an initial matter, Zhejiang Jingu provides no support for the former assertion that the products included in the HTS categories in question are equivalent to products that definitively contain this type of processing, and we find that this claim appears to be based on the similarly unsupported presumption that export products must necessarily contain this processing. Moreover, we find that Zhejiang Jingu’s latter argument, that the steel included in the Indonesian import categories may contain the processing in question because the narrative HTS descriptions of both categories do not specifically exclude the processing in question, is contradicted by record evidence.

¹³⁴ Petitioners cite to the following cases in support of their argument: *Shrimp/PRC* (August 19, 2011) and accompanying IDM at Comment 2 and 3, *Bristol Metals* (CIT April 20, 2010) 703 F. Supp. 2d at 1375-6, *Shandong Huarong* (CIT July 23, 2001) 159 F. Supp. 2d at 724, and *Fish Fillets/Vietnam* (March 22, 2011) and accompanying IDM at Comment I.

¹³⁵ See Section 773(c)(1) of the Act.

¹³⁶ See *CTL Plate/Romania* (March 15, 2005) and accompanying IDM at Comment 3.

¹³⁷ See e.g., *Pencils/PRC* (July 13, 2009) and accompanying IDM at Comment 4.

¹³⁸ See e.g., *id.*; see also *Honey/PRC* (October 4, 2001) and accompanying IDM at Comment 4.

¹³⁹ See e.g., *Shrimp/PRC* (August 19, 2011) and accompanying IDM at Comment 2.

¹⁴⁰ See Zhejiang Jingu’s Case Brief at 2.

The GTA descriptions of both the 7208.36 and 7208.37 categories state that the products included are “NESOI” (*i.e.*, not elsewhere specified or included) “Hot-rolled Worked Only,” whereas the official Indonesian HTS submitted to the record indicates that they are “Other, in coils, not further worked than hot- rolled.”¹⁴¹ As such, the definition of the products indicates that they contain no further processing subsequent to hot-rolling. Furthermore, the Indonesian HTS indicates that there is a separate subset of six-digit HTS subheadings under the four-digit 7208 category (“Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated”), which have descriptions almost identical to the 7208.36 and 7208.37 descriptions (*i.e.*, specifying thickness), with the sole difference being the addition of one of the proprietary processing steps identified by Zhejiang Jingu to the definition. Thus, because the proprietary processing in question is elsewhere specified and indicated within another grouping of otherwise identical 7208 subheadings, we find that Zhejiang Jingu’s concern as to the inclusion of further processed steel in the selected HTS categories to be unsupported by record evidence. As a result, we find that Zhejiang Jingu’s contention that the use of this SV effectively double-counts the inputs used by Jingu to perform the processing on its domestically sourced steel is similarly unfounded.¹⁴²

Finally, even if the Department were to accept Zhejiang Jingu’s presumption that the Indonesian import data include a certain amount of transactions related to products which contain the additional processing in question, we find that these values would still represent the best available source from which to value HRS rim and disk inputs when compared to the *Steel Indonesia* data suggested for use in the alternative. The entirety of the *Steel Indonesia* dataset submitted to the record is a two-page chart of prices for “Grade: MS” “Hot Rolled Coil (HRC) Mild Steel/Low Carbon Steel.”¹⁴³ The chart itself consists of “low,” “high” and “average” prices of this type of steel for approximately 65 individual days between July 2008 and May 2011 (with a total of 12 price quotes from days in the POI). Zhejiang Jingu provides no further information regarding this dataset, and there is no indication as to the source of these prices. Thus, as noted by Petitioners, the Department is not able to determine the manner in which the data was collected, whether the prices were based on quotes or actual transactions, or whether they are tax exclusive. As such, we are unable to conclude that this data satisfies the Department’s basic SV criteria. Furthermore, the description of the products included in the *Steel Indonesia* data (*i.e.*, “Grade: MS” “Hot Rolled Coil (HRC) Mild Steel/Low Carbon Steel”) does not specify the length, width, or level of processing of the materials included and is, thus, significantly less-specific to the inputs in question when compared to the GTA data used for the *Preliminary Determination*. Indeed, Zhejiang Jingu offers no argument as to why this value would provide a superior surrogate price to value two separate HRS inputs when compared with the GTA data, aside from indicating that the resulting per unit price is more in line with what it deems to be a price for HRS which does not include the aforementioned processing.

As established in the *Preliminary Determination*, we continue to find that the GTA Indonesian import data under HTS subheadings 7208.36 and 7208.37 are publicly available, broad market

¹⁴¹ See the Tariff Schedule of Indonesia, included at Attachment 1-1 of Petitioners’ Surrogate Value Comments.

¹⁴² For further analysis of this issue, including a discussion of the proprietary processes in question and a description of the HTS category definitions which indicate the inclusion of this processing, see Final SV Memo.

¹⁴³ See Zhejiang Jingu’s 10/11/11 SQR at Exhibit 2.

averages, contemporaneous with the POR, tax-exclusive, and representative of significant quantities of imports, thus satisfying critical elements of the Department's SV test. Moreover, these data allow for separate valuation of rim and disk HRS inputs based on width and thickness of the input (consistent with respondents' production experience). Thus, they represent the most specific data on the record to the value the inputs in question. Therefore, we find that they represent the best available information for purposes of valuing respondents' HRS FOPs and have continued to use GTA Indonesian import data under HTS subheadings 7208.36 and 7208.37 to value rim and disk HRS inputs, respectively, for this final determination.

Comment 9: Treatment of Harbor Maintenance and Merchandise Processing Fees

- Petitioners argue that harbor maintenance and merchandise processing fees should be deducted from U.S. price for all relevant Zhejiang Jingu sales of subject merchandise, as those fees clearly relate to Jingu's U.S. import duty expenses.

Department's Position: We agree with petitioner and instructed Zhejiang Jingu to report these items in its corrected U.S. sales database, pursuant to our findings at verification.¹⁴⁴

Comment 10: Corrections to Zhejiang Jingu's Databases

- Zhejiang Jingu requests that the Department base its final determination on the revised U.S. sales and FOP databases Zhejiang Jingu submitted after the Department's on-site verifications of Jingu and its affiliate, Yata, which incorporate multiple modifications pursuant to its minor corrections and other findings at its verifications.

Department's Position: During the verifications of Jingu and Yata, the Department noted and confirmed several findings requiring minor corrections to the previously submitted databases. The corrections involve: i) the revision of domestic inland freight from factory to port; ii) the inclusion of harbor maintenance and merchandise processing fees in the U.S. duty calculation; iii) the revision of the packing configuration reported for pallets used in certain sales; and iv) the revision of per-unit consumption figures for welding wire, electric welding rod, pigment, resin, organic solvent, pH regulator, and powder coating. Therefore, for this final determination, the Department has used the revised U.S. sales and FOP databases Jingu and Yata submitted, pursuant to the Department's request, after their respective verifications.¹⁴⁵

¹⁴⁴ See "Department Position" to Comment 10, below.

¹⁴⁵ See Zhejiang Jingu's Final Analysis Memo. Furthermore, during the verifications, the Department noted several findings that are also addressed in the Department's revised margin calculations for these final results. The revisions include: i) the incorporation of more accurate U.S. inland freight distances from port to customer (for DDP sales); and ii) the revision of pallet FOPs to reflect the pallet weights found during verification. *See id.*

RECOMMENDATION:

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

AGREE_____ DISAGREE_____

Paul Piquado
Assistant Secretary
for Import Administration

Date

| <i>Antidumping/Countervailing Duty Proceeding Federal Register Cite Table</i> <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|---|
| Case Short Cite: | Case Full Cite: |
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| <i>Citric Acid/PRC Final</i> (December 14, 2011) | <i>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)</i> |
| <i>Citric Acid/PRC LTFV Final</i> (April 13, 2009) | <i>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)</i> |
| <i>Citric Acid/PRC Prelim</i> (June 10, 2011) | <i>Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review, 76 FR 34048 (June 10, 2011)</i> |
| <i>Cold-Rolled Flat Products/Netherlands</i> (April 15, 1997) | <i>Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18476 (April 15, 1997)</i> |

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|--|
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| <i>CTL Plate/Romania (March 15, 2005)</i> | <i>Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005)</i> |
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| <i>Enriched Uranium/France (August 3, 2004)</i> | <i>Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 69 FR 46501 (August 3, 2004)</i> |
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| <i>FMTCs/PRC (January 18, 2011)</i> | <i>Folding Metal Tables and Chairs From the People's Republic of China: Final Results of 2007-2008 Deferred Antidumping Duty Administrative Review and Final Results of 2008-2009 Antidumping Duty Administrative Review, 76 FR 2883 (January 18, 2011)</i> |
| <i>FSVs/PRC (November 15, 2011)</i> | <i>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)</i> |
| <i>Honey/PRC (October 4, 2001)</i> | <i>Notice of Final Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001)</i> |
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| <i>Ironing Tables/PRC (March 21, 2011)</i> | <i>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 15297 (March 21, 2011)</i> |
| <i>Kitchen Racks/PRC (July 27, 2009)</i> | <i>Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009)</i> |

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|--|
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| <i>Lined Paper/PRC Final</i> (September 8, 2006) | <i>Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China</i> , 71 FR 53079 (September 8, 2006). |
| <i>Lined Paper/PRC Prelim</i> (April 17, 2006) | <i>Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China</i> , 71 FR 19695 (April 17, 2006) |
| <i>LWTP/PRC</i> (October 2, 2008) | <i>Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 73 FR 57329 (October 2, 2008) |
| <i>MLWF/PRC</i> (October 18, 2011) | <i>Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 76 FR 64318 (October 18, 2011) |
| <i>OCTG/PRC</i> (April 19, 2010) | <i>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</i> , 75 FR 20335 (April 19, 2010) |
| <i>OCTG/PRC CVD Prelim</i> (December 7, 2009) | <i>Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination</i> , 74 FR 64045 (December 7, 2009) |
| <i>Orange Juice/Brazil</i> (January 13, 2006) | <i>Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil</i> , 71 FR 2183 (January 13, 2006) |
| <i>OTR Tires/PRC</i> (April 25, 2011) | <i>Certain New Pneumatic Off-the Road Tires From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review</i> , 76 FR 22871 (April 25, 2011) |
| <i>OTR Tires/PRC</i> (July 15, 2008) | <i>Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances</i> , 73 FR 40485 (July 15, 2008) |
| <i>OTR Tires/PRC Amended Final and AD Order</i> (September 4, 2008) | <i>Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order</i> , 73 FR 51624 (September 4, 2008) |
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| <i>OTR Tires/PRC Prelim (February 20, 2008)</i> | <i>Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 9278 (February 20, 2008)</i> |
| <i>Pasta/Italy (June 14, 1996)</i> | <i>Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326 (June 14, 1996)</i> |
| <i>Pencils/PRC (July 13, 2009)</i> | <i>Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406 (July 13, 2009).</i> |
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| <i>Persulfates/PRC (February 14, 2006)</i> | <i>Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725 (February 14, 2006)</i> |
| <i>PET Film/PRC (November 3, 2011)</i> | <i>Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 68140 (November 3, 2011)</i> |
| <i>Preliminary Determination (November 2, 2011)</i> | <i>Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703 (November 2, 2011)</i> |
| <i>Pure Magnesium/PRC (December 23, 2010)</i> | <i>Pure Magnesium From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010)</i> |
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| <i>Saccharin/PRC</i> (September 11, 2007) | <i>Saccharin from the People's Republic of China: Final Results of the 2005– 2006 Antidumping Duty Administrative Review, 72 FR 51800 (September 11, 2007)</i> |
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| <i>Shrimp/PRC</i> (August 19, 2011) | <i>Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011)</i> |
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| <i>Silicon Metal/PRC</i> (January 19, 2011) | <i>Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order, 76 FR 3084 (January 19, 2011)</i> |
| <i>Silicon Metal/Russia</i> (February 11, 2003) | <i>Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003)</i> |
| <i>Softwood Lumber/Canada AD Final</i> (April 2, 2002) | <i>Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002)</i> |
| <i>Stainless Wire Rod/Korea</i> (April 12, 2004) | <i>Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153 (April 12, 2004)</i> |

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| <i>Steel Nails/PRC</i> (June 17, 2010) | <i>Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review</i> , 75 FR 34424 (June 17, 2010) |
| <i>Steel Wire Hangers/PRC</i> (October 28, 2011) | <i>Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review</i> , 76 FR 66903 (October 28, 2011) |
| <i>Steel Wire Rod/Ukraine</i> (August 30, 2002) | <i>Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine</i> , 67 FR 55785 (August 30, 2002) |
| <i>Swine/Canada</i> (March 11, 2005) | <i>Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada</i> , 70 FR 12181 (March 11, 2005) |
| <i>Television Receivers/PRC</i> (April 16, 2004) | <i>Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China</i> , 69 FR 20594 (April 16, 2004) |
| <i>Tomatoes/Canada</i> (February 26, 2002) | <i>Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada</i> , 67 FR 8781 (February 26, 2002) |
| <i>TRBs/PRC Prelim</i> (July 13, 2011) | <i>Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2009–2010 Administrative Review of the Antidumping Duty Order and Intent To Rescind Administrative Review, in Part</i> , 76 FR 41207 (July 13, 2011) |
| <i>Welded Steel Pipe/PRC</i> (June 5, 2008) | <i>Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China</i> , 73 FR 31970 (June 5, 2008) |
| <i>Wire Rope/PRC</i> (February 28, 2001) | <i>Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia</i> , 66 FR 12759 (February 28, 2001) |

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| <i>Bethlehem Steel</i> (CIT October 14, 1998) | <i>Bethlehem Steel Corp. v. United States</i> , 27 F. Supp. 2d 201 (CIT 1998) |
| <i>Blue Chip Stamps</i> | <i>Blue Chip Stamps v. Manor Drug Stores</i> , 421 U.S. 723 (1975) |
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| <i>Central Bank of Denver</i> | <i>Central Bank of Denver v. First Interstate Bank</i> , 511 U.S. 164 (1994) |
| <i>Chaparral</i> (Fed. Cir. April 17, 1990) | <i>Chaparral Steel Co. v. United States</i> , 901 F.2d 1097 (Fed. Cir. 1990) |
| <i>Corus Staal I</i> (Fed. Cir. 2005) | <i>Corus Staal BV v. Department of Commerce</i> , 395 F.3d 1343 (Fed. Cir. 2005) |
| <i>Corus Staal II</i> (Fed. Cir. 2007) | <i>Corus Staal BV v. U.S.</i> , 502 F.3d 1370, 1375 (Fed. Cir. 2007) |
| <i>Dole Food</i> | <i>Dole Food Co. v. Patrickson</i> , 538 U.S. 468 (2003) |
| <i>Dorbest</i> (CIT 2006) | <i>Dorbest Ltd. v. United States</i> , 462 F. Supp. 2d 1262 (CIT 2006) |
| <i>FCC</i> | <i>FCC v. NextWave Personal Communications, Inc.</i> , 537 U.S. 293 (2003) |
| <i>Franklin National Bank</i> | <i>Franklin National Bank v. New York</i> , 347 U.S. 373 (1954) |
| <i>Fujitsu</i> (Fed. Cir. 1996) | <i>Fujitsu General Ltd. v. United States</i> , 88 F.3d 1034 (CAFC 1996) |
| <i>Georgetown Steel</i> (Fed. Cir. September 18, 1986) | <i>Georgetown Steel Corp. v. United States</i> , 801 F.2d 1308 (Fed. Cir. 1986) |
| <i>GPX CAFC</i> (Fed. Cir. 2011) | <i>GPX Int'l Tire Corp. v. United States</i> , 666 F.3d 732 (Fed. Cir. 2011) |
| <i>GPX I</i> (CIT September 18, 2009) | <i>GPX Int'l Tire Corp. v. United States</i> , 645 F. Supp. 2d 1231 (CIT 2009) |
| <i>GPX II</i> (CIT August 4, 2010) | <i>GPX Int'l Tire Corp. v. United States</i> , 715 F. Supp. 2d 1337 (CIT 2010) |
| <i>Hebei Metals</i> (CIT 2005) | <i>Hebei Metals & Minerals Imp. & Exp. Corp. v. United States</i> , 366 F. Supp. 2d 1264, 1277 (CIT 2005) |
| <i>Hoogovens Staal</i> (CIT March 13, 1998) | <i>Hoogovens Staal BV v. United States</i> , 4 F. Supp. 2d 1213 (CIT 1998) |
| <i>Magnesium Corp.</i> (Fed. Cir. 1999) | <i>Magnesium Corp. of Am. v. United States</i> , 166 F.3d 1364 (Fed. Cir. 1999) |
| <i>Meghrig</i> | <i>Meghrig v. KFC Western, Inc.</i> , 516 U.S. 479 (1996) |
| <i>Mitsubishi</i> (Fed. Cir. March 15, 1990) | <i>Mitsubishi Elec. Corp. v. United States</i> , 898 F.2d 1577 (Fed. Cir. 1990) |
| <i>Nation Ford</i> (Fed. Cir. 1999) | <i>Nation Ford Chem. Co. v. United States</i> , 166 F.3d 1373 (Fed. Cir. 1999) |
| <i>NSK</i> (Fed. Cir. 2007) | <i>NSK Ltd. v. United States</i> , 510 F.3d 1375 (Fed. Cir. 2007) |
| <i>Nucor</i> (Fed. Cir. July 7, 2005) | <i>Nucor Corp. v. United States</i> , 414 F.3d 1331 (Fed. Cir. 2005) |
| <i>Peer Changshan</i> (CIT January 28, 2011) | <i>Peer Bearing Company-Changshan v. United States</i> , 752 F. Supp. 2d 1353 (CIT 2011) |
| <i>PQ Corp.</i> (CIT January 27, 1987) | <i>PQ Corp. v. United States</i> , 652 F. Supp. 724 (CIT 1987) |

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| <i>Shandong Huarong</i> (CIT July 23, 2001) | <i>Shandong Huarong Gen. Corp. v. United States</i> , 159 F. Supp. 2d 714 (CIT 2001) |
| <i>U.S. Steel</i> (CIT July 7, 1998) | <i>U.S. Steel Group v. United States</i> , 15 F. Supp. 2d 892 (CIT 1998) |
| <i>Valkia</i> (CIT June 18, 2004) | <i>Valkia Ltd. v. United States</i> , 28 C.I.T. 907 (CIT 2004) |
| <i>Wheatland</i> (CIT 2006) | <i>Wheatland Tube v. United States</i> , 414 F. Supp. 2d 1271 (CIT 2006) |
| <i>Wheatland CAFC</i> (Fed. Cir. 2007) | <i>Wheatland Tube Co. v. United States</i> , 495 F.3d 1355 (Fed. Cir. 2007) |
| <i>Whitfield</i> | <i>Whitfield v. United States</i> , 543 U.S. 209 (2005) |

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| Aluminum Extrusions LTFV Investigation Scope Memo | Memorandum from the Department entitled, "Preliminary Determinations: Comments on the Scope of the Investigations," dated October 27, 2010 (Issued in reference to the AD Investigation of Aluminum Extrusions from the PRC) |
| Blackstone/OTR's Case Brief | Letter from Blackstone/OTR to the Department entitled, "Case Brief of Blackstone/OTR LLC and OTR Wheel Engineering, Inc.: Certain Steel Wheels From the People's Republic of China," dated January 20, 2012 |
| Blackstone/OTR's Scope Comments | Letter from Blackstone/OTR to the Department entitled, "Response to Post-Preliminary Supplemental Questionnaire Certain Steel Wheels From the People's Republic of China," dated December 13, 2011 |
| Centurion's Case Brief | Letter from Centurion to the Department entitled, "Antidumping Duty Investigation of Certain Steel Wheels From China – Case Brief," dated January 20, 2012 |
| Centurion's CEP Verification Exhibit Submission | Letter from Centurion to the Department entitled, "Antidumping Duty Investigation of Certain Steel Wheels From China: Verification Exhibits," dated November 28, 2011 |
| Centurion's CEP Verification Report | Memorandum from the Department entitled, "Verification of the Sales Responses of Centurion Wheel Manufacturing Company ("Centurion USA") in the Antidumping Duty Investigation of Certain Steel Wheels From the People's Republic of China," dated January 10, 2012 |

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| Centurion's EP Verification Report | Memorandum from the Department entitled, "Verification of the Sales Responses of lining Centurion Wheel Manufacturing Company, Ltd. in the Antidumping Duty Investigation of Certain Steel Wheels From the People's Republic of China," dated January 10, 2012 |
| Centurion's Final Analysis Memo | Memorandum from the Department entitled, "Investigation of Certain Steel Wheels from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Jining Centurion Wheels Manufacturing Co., Ltd. and Centurion Wheel Manufacturing Company," dated concurrently with this memorandum |
| Centurion's Post-Prelim Factual Submission | Letter from Centurion to the Department entitled, "Antidumping Duty Petition on Certain Steel Wheels From China: Factual Information and Corrections," dated November 14, 2011 |
| Centurion's Post-Prelim SV Submission | Letter from Centurion to the Department entitled, "Antidumping Duty Investigation of Certain Steel Wheels From China Surrogate Values," dated December 19, 2011 |
| Centurion's Rebuttal Case Brief | Letter from Centurion to the Department entitled, "Antidumping Duty Investigation of Certain Steel Wheels From China – Rebuttal Case Brief," dated January 25, 2012 |
| Centurion's Updated Monthly Shipment Submission | Letter from Centurion to the Department entitled, "Antidumping Duty Investigation of Certain Steel Wheels From China Response to Request for Monthly Shipment Information Questionnaire," dated November 14, 2011 |
| Factual Information Clarification Memo | Memorandum from the Department entitled, "Clarification of Factual Information and Request for Comment," dated January 23, 2011 |
| Final Critical Circumstances Memo | Memorandum from the Department entitled, "Critical Circumstances Data and Calculations for the Final Determination," dated concurrently with this memorandum |
| Final SV Memo | Memorandum from the Department entitled, "Antidumping Duty Investigation of Certain Steel Wheels from the People's Republic of China ("PRC"): Final Determination Surrogate Value Memorandum," dated concurrently with this memorandum |
| GOC's Case Brief | Letter from the Government of China to the Department entitled, "Certain Steel Wheels from China; AD Investigation – GOC Case Brief," dated January 20, 2012 |

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| Memorandum: Short Cite | Memorandum: Full Cite |
| Jiaxing Stone's Scope Comments | Letter from Jiaxing Stone to the Department entitled, "Jiaxing Stone Wheel Co., Ltd. Post Preliminary Supplemental Questionnaire Response in the Antidumping Duty Investigation of Certain Steel Wheels from the People's Republic of China," dated December 13, 2011 |
| Petition | Letter from Petitioners to the Department entitled, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Steel Wheels From the People's Republic of China," dated March 30, 2011 |
| Petitioners' Case Brief | Letter from Petitioners to the Department entitled, "Certain Steel Wheels from the People's Republic of China," dated January 20, 2012 |
| Petitioners' Rebuttal Case Brief | Letter from Petitioners to the Department entitled, "Certain Steel Wheels from the People's Republic of China," dated January 25, 2012 |
| Petitioners' Rebuttal to Blackstone/OTR Scope Comments | Letter from Petitioners to the Department entitled, "Response to Supplemental Questionnaire Response of Blackstone/OTR - Steel Wheels from the People's Republic of China," dated December 23, 2011 |
| Petitioners' Response to Clarification of Factual Information Memo | Letter from Petitioners to the Department entitled, "Certain Steel Wheels from the People's Republic of China," dated January 25, 2012 |
| Petitioners' Scope Comments | Letter from Petitioners to the Department entitled, "Response to Supplemental Questionnaire: Steel Wheels from the People's Republic of China," dated December 13, 2011 |
| Petitioners' Surrogate Value Comments | Letter from Petitioners to the Department entitled, "Certain Steel Wheels from China," dated August 19, 2011 |
| Preliminary Critical Circumstances Memo | Memorandum from the Department entitled, "Critical Circumstances Data and Calculations for the Preliminary Determination," dated October 26, 2011 |
| Preliminary SV Memo | Memorandum from the Department entitled, "Antidumping Duty Investigation of Certain Steel Wheels from the People's Republic of China ("PRC"): Preliminary Determination Surrogate Value Memorandum," dated October 26, 2011 |
| Request for Centurion's Monthly Shipment Information | Letter from the Department to Centurion entitled, "Antidumping Duty Investigation of Certain Steel Wheel from the People's Republic of China ("PRC"): Updated Request for Monthly Shipment Information," dated November 8, 2011 |

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| Request for DOT Information | Letter from the Department to All Interested Parties entitled, "LTFV antidumping duty investigation of Certain Steel Wheels from the People's Republic of China: Post-Preliminary Request for Information," dated December 6, 2011 |
| Request for Zhejiang Jingu's Monthly Shipment Information | Letter from the Department to Zhejiang Jingu entitled, "Antidumping Duty Investigation of Certain Steel Wheel from the People's Republic of China ("PRC"): Updated Request for Monthly Shipment Information," dated November 8, 2011 |
| Yata Verification Report | Memorandum from the Department entitled, "Verification of the Sales Information of Yata Industry Company, Ltd." dated January 11, 2012 |
| Zhejiang Jingu's 10/11/11 SQR | Letter from Zhejiang Jingu to the Department entitled, "Response to the Department's September 27, 2011 Supplemental Questionnaire," dated October 11, 2011 |
| Zhejiang Jingu's Case Brief | Letter from Zhejiang Jingu to the Department entitled, "Antidumping Duty Investigation of Steel Wheels from China: Case Brief," dated January 20, 2012 |
| Zhejiang Jingu's Final Analysis Memo | Memorandum from the Department entitled, "Investigation of Certain Steel Wheels from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Zhejiang Jingu Company Limited ("Jingu") and Shanghai Yata Industry Company Limited ("Yata")," dated concurrently with this memorandum |
| Zhejiang Jingu's Post-Prelim SV Submission | Letter from Zhejiang Jingu to the Department entitled, "AD Duty Investigation of Steel Wheels from China: Publicly Available Surrogate Value Information for the Final Determination," dated December 19, 2011 |
| Zhejiang Jingu's Rebuttal to Petitioners Scope Comments | Letter from Zhejiang Jingu to the Department entitled, "AD Investigation of Steel Wheels from China: Post-Verification Submission of Revised U.S. Sales and Factors of Production Databases," December 23, 2011 |
| Zhejiang Jingu's Scope Comments | Letter from Zhejiang Jingu to the Department entitled, "AD Duty Investigation of Steel Wheels from China: Response to the Department's December 6, 2011 Post-Preliminary Determination Supplemental Questionnaire," dated December 13, 2011 |
| Zhejiang Jingu's Updated Monthly Shipment Submission | Letter from Zhejiang Jingu to the Department entitled, "AD Investigation of Steel Wheels from China: Updated Critical Circumstances Data," dated November 14, 2011 |

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| <i>AD Manual</i> (2009) | U.S. Department of Commerce, Import Administration, <i>Antidumping Manual</i> (2009), available at http://ia.ita.doc.gov/admanual/index.html |
| <i>Agricultural Policies and World Markets</i> | <i>Agricultural Policies and World Markets</i> , MacMillan Pub. Co., 1985 |
| <i>Circular Welded Carbon-Quality Steel Pipes/PRC ITC Preliminary Report</i> (July 2007) | <i>Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, ITC Preliminary Report</i> , (Publ. 3938 July 2007) |
| <i>Final Modification for Antidumping Investigations</i> | <i>Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation</i> , 71 FR 77722 (December 27, 2006) |
| <i>GAO Report</i> (June 2005) | United States Government Accountability Office's Report to Congressional Committee entitled, " <i>U.S.-CHINA TRADE: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties</i> ," GAO-05-474 (June 2005) |
| ITC Instruction Booklet | U.S. ITC Publication entitled, "Instruction Booklet: General Information, Instructions, And Definitions For Commission Questionnaires," related to <i>Certain Steel Wheels from China: Investigation Nos. 701-TA-478 and 731-TA-1182 (Final)</i> |
| <i>ITC Preliminary Report</i> | U.S. ITC Publication 4233, <i>Certain Steel Wheels from China: Investigation Nos. 701-TA-478 and 731-TA-1182(Preliminary)</i> , May 2011 |
| N/A | H.R. Rep. No. 317, 96 th Cong., 1 st Sess. 63 (1979) |
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| N/A | H.R. 2528, 103 rd Cong., 1 st sess. 1993 |
| <i>SAA</i> (1994) | <i>Statement of Administrative Action accompanying the Uruguay Round Agreements Act</i> , H.R. Rep. No. 103-316 (1994) |
| <i>Tires/PRC ITC Final Report</i> (August 2008) | <i>Certain New Pneumatic Off-the-Road Tires from China, ITC Final Report</i> (Publ. 4031, August 2008) |
| <i>URAA</i> (1994) | URAA, Pub L. No. 103-465, 108 Stat. at 4809 (1994) |
| <i>World Trade Report 2006</i> | World Trade Report 2006, Exploring the Links Between Subsidies, Trade and the WTO (2006) |
| <i>WTO Appellate Report</i> (March 11, 2011) | Report of the Appellate Body (WTO) entitled, <i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products From China</i> , AB-2010-3, WT/DS379/AB/R (March 11, 2011) |

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