DATE: September 8, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of the 2013-2014 Administrative Review of the Antidumping Duty Order on Utility Scale Wind Towers from the Socialist Republic of Vietnam

Summary

The Department analyzed the comments from interested parties in the 2013-2014 administrative review of the antidumping duty order on utility scale wind towers from Vietnam. As a result of our analysis, we made changes to our margin calculation for CSWG in these final results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Background

On March 9, 2015, the Department published the Preliminary Results of the administrative review of the AD order on utility scale wind towers from Vietnam.1 On June 3, 2015, the Department extended the deadline for issuing the final results by 60 days, until September 8, 2015. CSWG and Petitioner submitted case and rebuttal briefs on April 15, 2013 and April 23, 2015, respectively. Both parties participated in a public hearing on July 16, 2015.

Scope of the Order

The merchandise covered by this order are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100

1 See Preliminary Results. Please note that a list of short cites for case filings, administrative cases, court cases, and abbreviations are attached to this notice in the Appendix.
kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (i.e., where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the order is currently classified in the Harmonized Tariff System of the United States (“HTSUS”) under subheadings 7308.20.0020 or 8502.31.0000.3 Prior to 2011, merchandise covered by the order was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Discussion of the Issues

Comment 1: *Bona Fide Sale*

Significant portions of these arguments involve discussion of business proprietary information. Therefore, the full summary of and the Department’s positions on these arguments are included in the “*Bona Fides Memorandum*” issued concurrently with this IDM.

**Petitioner**

- Petitioner contends that CSWG’s single sale during the POR is not a *bona fide* sale because evidence on the record suggests that the single transaction between CSWG and its U.S. customer during the POR was unrepresentative of normal business practices and does not constitute a *bona fide* sale. According to Petitioner, evidence on the record makes clear that this transaction was carefully structured by CSWG solely to lower its antidumping duty margin in this administrative review. The circumstances surrounding the transaction – its deviation from the normal business practice between CSWG and the

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2 Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.
3 Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (i.e., accompanying nacelles and/or rotor blades.)
U.S. customer, the price, the quantity, the timing, and the apparent lack of an arm’s length transaction -- support this conclusion. In fact, it appears that the U.S. customer may have overpaid for certain delivery and freight costs, casting further doubt on the legitimacy of the transaction.

- Petitioner also argues that every aspect of the transaction deviates substantially from the long-standing and documented business processes and procedures that CSWG and its U.S. customer have followed. Petitioner argues that for this single transaction, the parties altered their sales process so significantly that it does not resemble, in any way, the numerous transactions between the two entities during the original investigation. Moreover, Petitioner contends there is no reasonable basis for the U.S. customer to purchase the subject towers from CSWG.

**CSWG**

- CSWG argues that its sale during the POR is a *bona fide* transaction based on the facts of this case and long established administrative and judicial precedent.\(^4\) For instance, in *SKF USA Inc.*, the Federal Circuit admonished the Department for failing to consider an exporter’s desire to adjust its business practices to effectuate the remedial intent of the AD law. Thus, CSWG contends that an AD order is not intended to prevent shipments to the U.S.; rather, it is intended to incentivize parties to modify their business practices to avoid selling goods to the U.S. at less than fair value and this is what happened in this antidumping case.

- CSWG argues that the factors the Department considers in its *bona fide* sales analysis demonstrate that CSWG’s U.S. sale is *bona fide* because:
  - The price and quantity of the U.S. transaction comports with prices and quantities of other sales of identical merchandise on the record, as well as multiple sources detailing quantities and prices using export sales. According to CSWG, the Department has long held that evidence of other export sales to third countries at similar prices is evidence of a *bona fide* sale.\(^5\)
  - The timing of the sale was reasonable under the commercial realities of producing and exporting large industrial wind towers under the restraints of an AD order, followed normal industry timelines\(^6\) and matched almost identically to the timeline for Petitioner’s order/production/delivery of identical towers.
  - No unusual expenses were incurred and a profit was made which supports the conclusion that this was a *bona fide* sale.\(^7\) CSWG contends that Petitioner’s argument regarding the shift in certain expenses from the U.S. customer to CSWG signals a carefully structured sale to reduce dumping rates is another unfounded allegation because the terms of delivery dictated that this expense would be incurred by CSWG and was, in any case, fully absorbed in the final pricing to the customer.

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\(^4\) See CSWG Rebuttal Brief at 10-17; *Pistachios from Iran 2008*; *Silicon Metals from Brazil*; *Pistachios from Iran 2003*; *Silicon Metals from Brazil*; *Freshwater Crawfish Tail Meat from China*; *Floor-Standing Metal-Top Ironing Tables from China*; *Saccharin from the PRC*; *Pistachios from Iran 2005*; *Frozen Warmwater Shrimp from China 2007*.

\(^5\) See *Solid Urea from the Russian Federation*.

\(^6\) See, e.g., *Frozen Fish Fillets from Vietnam*.

\(^7\) Id.
The transaction was clearly made on an arm’s-length basis because the U.S. sale was to an unaffiliated buyer reflecting the rational business interests of two parties with a long-standing relationship. Further the sale between the unaffiliated parties meets the Department’s long-standing definition of an arm’s-length sale because “arm’s-length transactions are those transactions whose terms are negotiated based on the independent interests of the parties involved.”

According to CSWG, a change to the terms of delivery in reaction to an AD order is not an indication of a non-bona fide transaction in these circumstances.

**Department’s Position:** Based on the totality of the circumstances, the Department continues to find that CSWG’s sale is a bona fide sale for the instant administrative review. As explained in the Preliminary Results, in accordance with TTPC, we consider the following factors when determining if a sale is bona fide: (1) timing of the sale; (2) price and quantity; (3) expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made at arm’s length. Thus, we consider a number of factors in our bona fide analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.” In TTPC, the court affirmed the Department’s practice of considering “any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,” and that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.” In New Donghua, the court stated that the Department’s practice makes clear that the Department “is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an AD order.”

We analyzed the sale at issue using the above five factors, as well as other factors raised by the Petitioner. As in the Preliminary Results, we continue to find that the totality of the facts and circumstances demonstrate that the sale is bona fide. Specifically, we find that the price negotiations and sales process were conducted for a reasonable duration between parties from a prior business relationship. With respect to price and quantity, information on the record demonstrates that the ex-works price is not atypically high, and there is no information on the record that the ex-works price and quantities of the towers are not commercially reasonable or atypical of the companies’ business practices. We also find that CSWG did not incur any extraordinary expenses. Further, the sale was made to an unaffiliated customer with the terms set by negotiation of the parties and payment was received in full, indicating that the sale was made at arm’s length. Based on the above analysis, as further explained in the Bona Fides Memorandum containing business proprietary information, for the final results, we find that CSWG’s sale during the POR is bona fide.

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8 See Silicon Metal from Brazil.
9 See Apex Exports, and Falcon Marine Exports Limited.
10 See TTPC.
11 See New Donghua.
12 See TTPC, 366 F. Supp. 2d at 1250.
13 Id., 366 F. Supp. 2d at 1263.
14 See New Donghua, 374 F. Supp. 2d at 1339.
Comment 2: Steel Plate

Petitioner

- Petitioner argues the Department should use GTA Indian import data under the HTS subheading 7208.51 to value the steel plate consumed in wind tower production because the other sources of Indian domestic steel prices do not represent the types of steel plate CSWG consumes in the production of subject merchandise. According to Petitioner, the Department should use GTA Indian import data because only this data on the record reflects the prices of the steel grades that CSWG consumes.
- Petitioner asserts that the “quality and testing” premiums for the new Steel Guru India data\(^\text{15}\) contain a flaw which demonstrates that the “premiums” are not based on daily field surveys; rather, it appears that new Steel Guru data arbitrarily add a constant amount above a base price to generate an alleged premium.
- Petitioner also claims that the February 11, 2015, Steel Guru India clarification letter regarding IS2062 plate pricing appears suspect because CSWG failed to explain whether Gopen Huidrom is an employee of Steel Guru India and is qualified to respond to the technical nature of IS2062 pricing.
- Petitioner claims the new Steel Guru India data are not the best available information because they are not: (1) publicly-available through the Steel Guru India website; (2) from a government entity as was discussed in the CIT case, *Shantou Red Garden*; and (3) intended to be published (again citing to *Shantou Red Garden*).
- Petitioner alleges that the original Steel Guru India data\(^\text{16}\) are unusable because they do not reflect the steel plates CSWG consumes. Petitioner submitted equivalency charts with the chemical properties, physical characteristics, and mechanical properties of the steel plate CSWG uses and argues it is stronger than the IS2062 grade steel CSWG placed on the record.
- Petitioner argues new Steel Guru India data’s “quality and testing extras” do not reflect market prices and as such are not representative of the steel plate CSWG consumes because the new Steel Guru India data are merely a repackaged set of the “original” Steel Guru India data that do not reflect the premiums for HSLA steel. According to Petitioner, the “quality and testing extras” are estimates that do not reflect actual transactions because the “quality and testing extras” remained constant throughout the POR.
- Petitioner asserts that Infodrive data confirm that the claimed “quality and testing extras” in the new Steel Guru India data do not reflect the premium associated with CSWG’s steel plate.

\(^{15}\) New Steel Guru data are data CSWG placed on the record to value steel plate for this review.

\(^{16}\) Original Steel Guru data are data we used to value steel plate for the investigation.
CSWG

- CSWG argues the Department should reject Petitioner’s proposal to value steel plates because GTA data are a broad basket category that yield distorted AUVs and should select Steel Guru India data because they are specific. Citing to Sigma Corp. and Zhejiang Dunan Hetian Metal Co., CSWG argues the Department should select a surrogate value that describes the actual inputs as specifically, accurately and discretely as possible and that is representative of the inputs utilized by the manufacturer. CSWG also cites to Hebei Metals and Xinjiaemei Furniture (Zhangzhou) Co. for instances when the Department prefers domestic prices for the calculation of SVs.

- CSWG argues GTA Indian HTS 7208.51 import data are unsuitable for valuing specific grades of S355 and S235 HSLA tensile structural plates because Infodrive data for GTA Indian HTS 7208.51 demonstrate that during the POR, only 2.13 percent of total imports (by quantity) consisted of the types of steel plate used by CSWG. CSWG asserts that Infodrive data corroborate the new Steel Guru India data because Infodrive data shows that Japanese origin S355 steel grade steel plates with the same thickness levels as the plates used by CSWG were imported at an AUV of 39.26 Rs./Kg.

- CSWG claims that contrary to Petitioner’s suggestions, the IS2062 standards (as amended in 2011) are comparable to CSWG’s steel plates because they expressly cover HSLA grades of structural steel that includes the S355 grade. CSWG asserts that IS2062 grade steel plates are specific to S355 HSLA grade plate because the specifications provided for HSLA grades of steel under the IS2062 standards are also harmonized with the corresponding overseas standards, such as EN10025-2, prescribed for S355 grade HSLA plates.

- CSWG argues the contemporaneous and countrywide price data of IS2062 E350B0/BR/C steel grades afford the Department with the most specific SV for S355 J0/JR/NL steel grades because they match with one another in terms of chemical composition, physical characteristics and most importantly, mechanical properties of YS and TS as well as end-use, including the construction of wind towers.

- CSWG argues that the Department should reject Petitioner’s analysis of the Department’s publicly available criteria because public availability does not require publication.17

- CSWG contends that Petitioner’s attempts to impeach the quality of the new Steel Guru India data are unavailing because, contrary to Petitioner’s claim, the record contains no information that these microalloying elements are necessary constituents of IS2062 E350 B0 and IS2062 E350 BR grade steel.

Department’s Position: To value CSWG’s S355 steel plate, the record contains the following data sources: (1) new Steel Guru India data (i.e., IS2062 E350 B0/BR/C) for this POR; (2) GTA Indian import data; (3) original Steel Guru India data (i.e., IS2062 E250 Grade A/B, which corresponds to IS2062 E250 A/BR) used in the investigation proceeding; (4) Steel Chamber Weekly; (5) Joint Plant Committee; (6) Steel Mint data; (7) MEPs India; (8) MEPs Asia, CIS, the EU, the Middle East, Russia, Turkey Brazil, UAE and Ukraine; (9) Steel Orbis Ukraine and Turkey; and (10) Steel Guru India data from certain European countries (i.e., Spain, Italy, Germany, and Belgium).

17 See, e.g., Certain Preserved Mushrooms From China.
In the Preliminary Results, the Department valued CSWG’s steel plate inputs using domestic price data from new Steel Guru India because, based on record evidence at that time, they were the most specific to the grade and size of CSWG’s steel plate, contemporaneous with the POR, publicly-available, and tax-exclusive. Additionally, we preliminarily determined that the new Steel Guru India data best satisfied the Department’s SV criteria because the data represent a broad market average of actual steel prices in India, the primary surrogate country. For the final results, we reviewed the parties’ case and rebuttal briefs and continue to find that the new Steel Guru India data best satisfy the Department’s SV criteria.

Section 773(c)(1) of the Act directs the Department to use “the best available information” from the appropriate ME country to value FOPs. The Department evaluates potential SVs based on a well-established set of criteria which includes a strong preference for valuing all FOPs in the primary surrogate country. It is the Department’s practice, when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, to select, to the extent practicable, SVs which are period-wide, representative of a broad market average, specific to the input in question, net of taxes and import duties, contemporaneous with the POR, and publicly available. As there is no hierarchy for applying the above-mentioned criteria, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” available SV is for each input.

Furthermore, the Department has a preference to use domestic data when it has a choice between domestic data and import statistics that are equally reliable and otherwise equally satisfy the Department’s SV selection criteria. Moreover, the CIT has stated that “the preference for domestic data is most appropriate where the circumstances indicate that a producer in a hypothetical market would be unlikely to use an imported factor in its production process. The most obvious circumstance occurs where the import price is significantly greater than the domestic price.” Because steel plate is the primary input in wind towers, the valuation of the plate is an important factor in determining normal value and the resulting dumping margin.

New Steel Guru India Data and GTA data

Petitioner argues that GTA Indian import data for HTS category 7208.51 “Flat-Rolled Products of Iron or Nonalloy Steel Width 600mm or More, Not in Coils, Hot-Rolled Worked Only, Of a Thickness Exceeding 10 Mm, N.E.S.O.I.” are the best available information because the other sources on the record do not represent the type of steel CSWG consumes in the production of wind towers. According to Petitioner, CSWG consumes HSLA steel plate that sells at a premium. As such, the SV used to value this steel must reflect the more advanced and, therefore more expensive, grade of steel. Petitioner argues that the other sources on the record do not represent HSLA steel grade plate and the only value on the record that includes this specific grade of steel is GTA Indian import data for HTS subheading 7208.51.

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18 See 19 CFR 351.408(c)(2); see also Polyethylene Terephthalate Film, Sheet, and Strip From China.
20 See, e.g., Certain Steel Nails from China and accompanying IDM at Comment 3.
21 See Tianjin Magnesium.
22 See Hebei Metals & Minerals Imp. & Exp. Corp.; see also Zhengzhou Harmoni Spice.
23 See Petitioner Case Brief at 33-34.
We disagree. As an initial matter, we note that the Department addressed this same issue regarding whether GTA Indian import data are the best available data from which to value CSWG’s steel plate input in *CS Wind Co.* In *CS Wind Co.*, the CIT affirmed the Department’s decision to value S355 plate used by CSWG to produce wind towers in the investigation based on the original Steel Guru India data (i.e., IS2062 E250 A, BR) because record evidence suggests that the original Steel Guru India is comparable to CSWG’s S355 plates. Specifically, the Court stated:

On remand…{the Department} determined that the {Steel Guru India} data were more product specific than the GTA data because although the {Steel Guru India} data did not include data for the exact grade of steel used by CS Wind, it only included prices for a grade of steel that is comparable to S355, namely IS2062. In contrast, up to 96 percent of the steel prices included in the GTA data were not comparable to S355. {The Department} additionally noted the {Steel Guru India} data’s product specificity because, unlike the GTA data, the {Steel Guru India} data contain prices for the specific thicknesses of steel plate used by {CSWG} and are based on domestic data, which {the Department} prefers over import statistics. Finally, the prices derived from {Steel Guru India} are corroborated by several other data sources.

In contesting the Remand Results, {Petitioner} argues that IS2062 is not comparable to S355 such that {Steel Guru India} data are not more product specific than the GTA data. {Petitioner} specifically argues that because S355 is a structural steel plate with additional alloying elements that command a price premium, it cannot be comparable to IS2062, which is a commodity grade steel. Record evidence, however, supports {the Department’s} conclusion that IS2062 does have similar characteristics and end uses as S355. The evidence includes that fact that IS2062 is listed as structural steel plate in at least one source cited by {Petitioner}. Additionally, IS2062, along with grade ASTM 36, is contained in a list of grades appropriate for wind towers, and IS2062 is included on a list of grade fit for high tensile applications. Record evidence also suggests that ASTM A36 is equivalent to IS2062. The comparability of the two steel grades is further supported by the original petition, which stated that “{t}he primary inputs utilized in the production of a wind tower is carbon quality steel plate (often ASTM Grade A36) utilized to form the tower structure.”

…Here {the Department} acted reasonably in selecting the {Steel Guru India} data because it covers only steel that is of a comparable grade to S355 in that it is appropriate for use in wind towers, is specific as to the thickness used by {CSWG}, is based on domestic prices, and is generally corroborated by other data sets on the record. {The Department’s} decision was reasonable in light of the fact that although the GTA data preferred by {Petitioner} contained a small amount of the specific grade used by {CSWG} it also included a host of other grades that might not be suitable for wind towers, was not specific as to thickness, and was based on import prices. Accordingly, {the Department’s} use of {Steel Guru India} data as the steel plate surrogate value is sustained.\(^\text{24}\)

In this review, CSWG placed new Steel Guru India data on the record (i.e., IS2062 E350 B0/BR/C) based on the most recently updated Indian IS2062 standards (2011 revision). Similar to the data considerations in CS Wind Co. for the investigation, record evidence for this review indicates that new Steel Guru India data are of comparable grades to the S355 steel plate used by CSWG to produce subject merchandise during the POR. Specifically, the IS2062 standards (2011 revision) are harmonized with the European standard EN 10025-2, and the IS2062 standards (2011 revision) encompass specific types of HSLA structural steels grades that are equivalent to the three types of S355 steel plates used by CSWG.

Additionally, a letter of clarification from Steel Guru India confirms that IS2062 E350 B0/BR/C (price data of which is reported in the new Steel Guru India data) are equivalent to the three types of S355 steel plates used by CSWG. Furthermore, the mill certificates for the S355 steel plates consumed by CSWG during the POR corroborate that CSWG’s S355 steel plates are equivalent to IS2062 grades B0/BR/C (i.e., the new Steel Guru India data) since they share similar chemical composition, metallurgical properties (i.e., heat treatment), physical characteristics (“thickness levels”), end uses, and mechanical properties of yield strength (“YS”) and tensile strength (“TS”). YS and TS both are important parameters for selection of steel plates used in wind towers. As such, consistent with the rationale in CS Wind Co., we find for the final results that new Steel Guru India data are preferable because they cover only the steel grades that are of comparable grades to the S355 HSLA steel plate used by CSWG to produce subject merchandise during the POR.

Additionally, consistent with the rationale in CS Wind Co., we continue to reject GTA Indian import data because they are less product-specific than domestic new Steel Guru India data. In CS Wind Co., the Department rejected data from GTA Indian HTS category 7208.51.10, an eight digit basket category, because it reflected prices for many different types of steel and only four percent of the category encompassed grade 355. In this review, Petitioner argues that the Department use GTA Indian HTS category 7208.51, which is a less specific (six-digit) broad basket category that encompasses a broad range of products (e.g., steel sheets, strips) and non-specified “other” grades of flat rolled steel products that might not be suitable for wind towers. Infodrive India data for this category (HTS 7208.51) demonstrate that during the POR, only 2.13 percent of total imports (by quantity) consisted of S355 grade steel or that approximately 98 percent of the steel falling within the basket category are comprised of flat steel products other than S355 grade. Similar to CS Wind Co., we find that there is no evidence that the 98 percent of the steel falling within the basket HTS category 7208.51 is equivalent or comparable to CSWG’s steel. Furthermore, as noted above, the Department has a preference to use domestic data when it has a choice between domestic data and import statistics that are equally reliable and otherwise equally satisfy the Department’s SV criteria. In the instant case, as described

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25 See CSWG January 20, 2015 submission.
26 See CSWG December 16, 2014 submission at Exhibit S-6-1.2; see also CSWG August 6, 2014 submission.
27 See CSWG January 20, 2015 submission at Exhibit 1A.
28 Id. at 7-18.
29 See CS Wind Co.
30 See CSWG December 16, 2014 submission at Exhibit S-6-1.5.
31 See CSWG January 20, 2015 submission at 20 and Exhibit 5.
32 See also Tianjin Magnesium.
above, we find that domestic new Steel Guru India data better satisfy the Department’s SV selection criteria than the GTA Indian import data because they are more product-specific to CSWG’s input.

Further, we continue to find that the GTA Indian import data are less product-specific than the new Steel Guru India data with respect to the thickness levels of the steel input because new Steel Guru India data distinguish prices for specific thicknesses of steel plate consumed by CSWG. New Steel Guru India data allow the Department to obtain a more representative median price data for each type of steel plate reported in the FOP database because the Department is able to calculate four median prices for each relevant thickness and grade of IS2062 steel plate. Specifically, the AUVs of IS2062 E350 B0/BR/C and IS2062 E250 A/BR placed on the record to value (1) STEELPLT1U, (2) STEELPLT2U, (3) DRFRAMEU, and (4) ISTEELPLU are 40.61 Rs./Kg, 39.19 Rs./Kg, and 42.52 Rs./Kg, and 36.53 Rs./Kg, respectively. In contrast, the GTA Indian import data reported for HTS category 7208.51 reflect only one price (i.e., 52.10 Rs./Kg) for steel plate “of a thickness exceeding 10mm.”

Petitioner contends the Department should reject the new Steel Guru India data to value CSWG’s steel plate in the final results because they are not market prices, and as such not representative of the S355 steel consumed by CSWG. Petitioner further argues that the constant “quality and testing extras” through the POR in the new Steel Guru India data is inconsistent with “the significant changes in the price of microalloying and alloying elements.” We find Petitioner’s argument unpersuasive. According to Steel Guru India’s letter dated February 11, 2015, clarifying the IS2062 Steel Plate Price data, the price of superior grades of various steel items, including IS2062 E350 B0/BR/C steel plates, are determined by Indian steel producers by adding a certain fixed amount for quality and testing extras. The Steel Guru India clarification letter explains that while the price of base grade steel plates varies on a daily basis, the price of add-ons remain constant despite variations in the prices of alloying or microalloying elements or the actual amounts of such alloying or microalloying elements that are added in any particular case to achieve the superior grade. According to the February 11, 2015, Steel Guru India clarification letter, new Steel Guru India’s pricing structure for IS2062 E350 BR/B0/C follows the steel industry practice in India:

\[\text{Unlike the price of base grade steel plate as per IS2062 E250 BR, which may vary across regions, over time and also based on dimensions (thickness and width of plates), the extra amount required to be added in order to obtain any particular superior grade remains constant over the above three variables, as per steel manufacturing industry practice. Even though any superior grade such as IS2062 E350 B0 could be produced by several unique combinations of microalloying elements that do not translate into a range of pricing extras for such superior grade. For the sake of convenience and as a matter of steel industry practice, steel producers in India charge a fixed extra amount, over the prevailing price of base grade steel plate, from customers for a superior grade.}\]

\[\text{See Prelim SV Memorandum at 3-5.}\]
\[\text{See Prelim SV Memorandum at 3-5.}\]
\[\text{See Prelim SV Memorandum at 3-5.}\]
\[\text{See Petitioner Case Brief at 49-53.}\]
\[\text{See CSWG January 20, 2015 submission at 20 at Exhibit 1A.}\]
\[\text{Id.}\]
steel plate. This is how the pricing structure of superior grade steel plate in the Indian steel sector, and I believe even globally, are determined…

…our field staff located in all the major steel markets in India, gather and transmit the price data of not only the base grade steel plates but also the prevailing quality and testing extras charged for superior grade plates. As mentioned above, these add-ons -- quality and testing extras -- are found to remain a constant amount over fairly long time periods and are generally unaffected by moderate changes in the prices of microalloying and alloying elements. To clarify, these add-ons are based on actual market price data, not estimates.39

Petitioner provides no evidence that Steel Guru India’s pricing structure does not comport with the steel industry practice in India or that the add-ons are not representative of the IS2062 E350 BR/B0/C. Additionally, we find no evidence that the fluctuations in the prices of the microalloying elements affect the price for IS2062 E350 BR/B0/C steel plates. Assuming arguendo, that the fluctuations affect the price of the IS2062 E350 BR/B0/C steel plates, we agree with CSWG that there is no evidence that the microalloying elements have a significant effect on the overall cost of the plate that might be expected to result in a change in their selling prices.40 As noted by CSWG, the record contains no evidence that the microalloying elements--molybdenum, nickel, and ferrovanadium -- are necessary constituents of IS2062 E350 B0 and BR41 because the mill certificates cited by Petitioner only show that molybdenum (Mo), nickel (Ni), and vanadium (V) (not ferrovanadium (FeV)) are elements of IS2062 E350C grade plate.42 These microalloying elements are present only in minute quantities (i.e., 0.01 percent of Ni, 0.02 percent of Mo, and 0.06 percent of V), and there is no evidence that they have a significant effect on the overall cost of the plate.43 Moreover, Notes 5 and 6 to the IS2062 (2011 version) standards demonstrate that these microalloying elements are not necessary since they “may be added to {IS2062 grade plates} under an agreement between the purchaser and the manufacturer” and that the “{t}otal microalloying elements shall not be more than 0.25 percent.”44

Petitioner also asserts that the “quality and testing” premiums for the new Steel Guru India data contain a major flaw which demonstrates that the “premiums” are simple estimates of what Steel Guru India believes that superior grades of Indian steel plate were sold in India. Specifically, Petitioner argues that unlike the add-ons of other thicknesses, the “10 x 1250” size of steel is priced at 3000 Rs./MT above the base price for six of the seven regions. Accordingly, Petitioner argues that it appears that new Steel Guru data arbitrarily adds a constant amount above a base price to generate an alleged premium.45 We disagree with Petitioner’s interpretation of the evidence. According to the February 11, 2015 Steel Guru India clarification letter regarding IS2062 steel plate pricing, the extra add-on for the three superior grades were priced at:

39 Id. (emphasis added).
40 See CSWG Rebuttal Brief at 83-86.
41 Id.
42 See CSWG January 20, 2015 submission at 20 at Exhibit 1C.
43 Id.
44 See CSWG December 16, 2014 submission at Exhibit S-6-1.2 (page 3).
45 See Petitioner Case Brief at 39-42.
46 See CSWG January 20, 2015 submission at 20 and Exhibit 1A.
Based on the information in the clarification letter, we agree with Petitioner that there may be an error in the daily reviews of steel prices of “10 mm x 1250” sizes of steel. We do not, however, find that this is to be “major flaw” for this review, because none of CSWG’s plates are of 10 mm size thickness and, as such, this data was not used to calculate CSWG’s steel plate prices. We find there is no evidence that such a pricing error occurred for the steel plates actually consumed by CSWG.

Moreover, Petitioner does not rebut that the pricing structure that Steel Guru India applies is inconsistent with the steel industry practice in India and that the constant add-ons are not based on actual market price data. According to the February 11, 2015, Steel Guru India clarification letter, “to clarify, these add-on are based on actual market price data, not estimates.” As such, we continue to find that new Steel Guru India are the best available information because record evidence indicates the add-ons are reliable, based on actual market price data (i.e., not estimates), and that the prices are representative of IS2062 E350 B0/BR/C steel pricing.

Petitioner also questions the reliability of the February 11, 2015, Steel Guru India clarification letter regarding IS2062 plate pricing. According to Petitioner, CSWG failed to explain whether Mr. Gopen Huidrom is employed with Steel Guru India and qualified to respond to the technical nature of IS2062 pricing. Petitioner argues CSWG also failed to explain why and how an employee from “majorminor.com” has the letterhead of Steel Guru India’s founder in its possession and why the same exact signature with no variation are used on two different letters signed on different dates. Moreover, Petitioner claims the new Steel Guru India data and February 11, 2015, letter are not reliable because CSWG paid an additional fee in order to receive the new Steel Guru India data.

We disagree with Petitioner’s claim that Steel Guru India’s February 11, 2015, letter is unreliable. Record evidence indicates that Gopen Huidrom is employed with Steel Guru India. Specifically, the record includes two letters from Steel Guru India to CSWG, dated September 12, 2012 and August 6, 2014, that are signed by Mr. Gopen Huidrom using Steel Guru India letterhead. These letters identify Mr. Gopen Huidrom as the “Coordinator of Steel Prices India” for Steel Guru India. Additionally, Steel Guru India’s “Contact Us” information from its website corroborates Mr. Gopen Huidrom’s position as the Coordinator of Steel Prices India, as he is listed as the contact person for pricing information at Steel Guru India. As such, record

47 See CSWG Rebuttal Brief at 85; see also CSWG January 20, 2015 submission at 20 at Exhibit 4.
48 See CSWG January 20, 2015 submission at 20 at Exhibit 1A.
49 See Petitioner Case Brief at 42-43.
50 Id. at 43.
51 See CSWG August 6, 2014 submission at Exhibit 3A.
52 Id.
53 Id.
54 See Petitioner February 2, 2015 submission at Exhibit 11.
evidence indicates that Mr. Gopen Huidrom is an employee from Steel Guru India and that he would have access to Steel Guru India’s letterheads and pricing information.

We also disagree with Petitioner’s assertion that Mr. Gopen Huidrom provided the technical information of IS2062 pricing. Evidence on the record indicates that on February 2, 2015, counsel for CSWG sent an e-mail asking Steel Guru India to clarify the methodological and procedural issues with respect to the new Steel Guru India data. Mr. Gopen Huidrom responded to this email with an attachment containing the February 11, 2015, Steel Guru India clarification letter regarding IS2062 steel plate pricing signed by Mr. Nishith Sharma, the Founder of Steel Guru India. In other words, it was Mr. Nishith Sharma, not Mr. Gopen Huidrom, who provided the technical nature of IS2062 pricing using Steel Guru India’s letterhead.

Further, we disagree with Petitioner that Steel Guru India’s February 11, 2015, letter is unreliable because CSWG failed to explain why Mr. Nishith Sharma’s identical signature was used on two different letters signed on different dates. We agree with CSWG that such an occurrence is not necessarily indicative of the letters’ unreliability because CSWG has not provided any credible evidence that the signatures are unreliable. Finally, we disagree with Petitioner’s assertion that the new Steel Guru India data and the February 11, 2015, letter are not reliable because CSWG paid an additional fee for its services. The mere fact that a service is fee-based does not preclude the use of data from that service in determining surrogate values. In fact, the Department has routinely used data from fee-based services—including Descartes, as well as the World Trade Atlas and other services—in calculating surrogate values in the past.

Petitioner argues that the Department should reject new Steel Guru India data because they are not publicly available. Petitioner argues that while CSWG was able to obtain multiple letters and pricing data from Steel Guru India, “Steel Guru {India} refused to answer an email sent from {Petitioner}” and cited to one email dated January 5, 2015, from Petitioner to Steel Guru India. We note that we are unable to determine whether the Steel Guru India data are not publicly available on the basis on Petitioner’s one email. Moreover, Petitioner contends that the new Steel Guru India data are not publicly-available because the data are not available through the Steel Guru India’s website. Further, Petitioner distinguishes this case from Shantou Red Garden and contends that the new Steel Guru India data are not publicly available because they are not from a government entity or intended to be published as in Shantou Red Garden. We disagree. Public availability does not require that the information be published or available through a company website.

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55 See CSWG February 12, 2015 submission at Exhibit 1.
56 Id.
57 Id.
58 See Petitioner Case Brief at 43.
59 See Zhengzhou Harmoni Spice.
60 See Petitioner Case Brief at 46.
61 Id. at 44.
62 Id. at 44-48.
63 Id.
64 See Preamble (“{T}he Department elected to codify a preference for publicly available information rather than publicly available published information.”); See also “Proposed Rule” (stating that the regulations “drops the preference for published information, limiting the preference to publicly-available information.”);
government agencies, in this proceeding, unpublished data from a private source provides a more appropriate match for the input the Department is attempting to value.\(^{65}\) We find that new Steel Guru India data provides more specific information for the steel plate CSWG uses, and for the reasons described above, for the final results, we are continuing to use new Steel Guru India data to value CSWG’s steel plate.

Finally, Petitioner argues that new Steel Guru India data should be rejected because Infodrive data confirm that the “quality and testing extras” do not reflect the premium associated with S355 steel. According to Petitioner, the Infodrive prices for standard commodity grade IS2062 imported from Korea are approximately 600 USD/MT. Petitioner argues, on the other hand, S355 commodity grade entered India at approximately 870 USD/MT, thereby resulting in a price premium of 270 USD/MT. Therefore, Petitioner argues that the Infodrive data confirm that the price premiums from the new Steel Guru India data fail to reflect the actual premiums associated with S355 steel grades. We disagree with Petitioner’s interpretation of the Infodrive data. As an initial matter, the Department excludes IS2062 steel plate price data based on imports from Korea because prices from Korea are distorted by broadly available, non-industry specific export subsidies in Korea.\(^{66}\) Additionally, we find that Petitioner does not make an appropriate apples-to-apples comparison. Instead of comparing Infodrive prices for IS2062 steel plates from Korea with Infodrive prices for S355 steel plates from Korea, Petitioner compares Infodrive prices for IS2062 steel plates from Korea with Infodrive prices for S355 steel plates from all the countries entering India. The Department examined the Infodrive data and notes that Infodrive data demonstrate that S355 plates entering India from Germany have thicknesses that exceed 100 mm that are sold at significantly higher AUVs. These thicker German S355 grade steel plates are not comparable to the S355 steel plates used by CSWG. Unlike German S355 grade steel plates, Japanese S355 steel plates are more comparable to CSWG’s steel plate and corroborate the new Steel Guru India AUVs for IS2062 steel plates. Specifically, Japan’s S355 grade steel plates have thicknesses ranging from 38, 50, or 55 mm and the Infodrive AUV for Japan’s S355 steel plate is 44.31 Rs./Kg,\(^{67}\) which corroborates the AUVs for the new Steel Guru India IS2062 E350 BR/B0/C steel plates (\textit{i.e.}, 39.19-42.52 Rs./Kg). As such, we disagree with Petitioner that Infodrive data confirm that the price premiums from the new Steel Guru India data fail to reflect the actual premiums associated with CSWG’s steel grades.

\textit{All Other Data}

In the \textit{Preliminary Results}, the Department found that all the other sources on the record to value CSWG’s S355 steel plate were not the best available information.\(^{68}\) We have found no additional information since the \textit{Preliminary Results} indicating that these other data sources are the best available information. Further, none of the parties argued that we should rely on these other data sources to value steel CSWG’s steel plate. Therefore, we continue to find that these other data sources are not the best available information and are selecting new Steel Guru India data for the reasons discussed above.

\(^{65}\) \textit{See Freshwater Crawfish Tail Meat from China}, Comment 1.

\(^{66}\) \textit{See Steel Nails from Korea}.

\(^{67}\) 71055 USD/Kg.*62.39 Rs. = 44.31 Rs./Kg.

\(^{68}\) \textit{See Prelim SV Memorandum}. 
Comment 3: Market Economy Prices from Korea

CSWG is comprised of CS Wind Corporation, located in Korea, and CS Wind Vietnam, the Vietnamese producer of wind towers that is owned by CS Wind Corporation.

Petitioner

- Petitioner argues the Department should continue to disregard CSWG’s ME prices from Korea because it is the Department’s longstanding practice not to use export prices from a ME for the valuation of inputs when it has a reason to believe or suspect that the product benefits from broadly available export subsidies. 69
- Petitioner asserts that although this policy is generally applicable to the selection of surrogate values, it is equally applicable to the rejection of ME prices in favor of surrogate prices, a practice that has been repeatedly upheld by the CIT and the U.S. Court of Appeal for the Federal Circuit. 70
- Petitioner argues that in upholding the Department’s practice, the CIT acknowledged that although the Department “has a duty to calculate dumping margins as accurately as possible and should typically refrain from using surrogate values...where market-determined values are available,” the Department “cannot be compelled to use actual prices where it has reason to believe or suspect that such prices are subsidized.” 71
- Petitioner asserts that the CIT also found that nothing in the statute or the Department’s regulations compel the use of actual market prices over surrogate values. 72
- Moreover, Petitioner argues the legislative history of Section 773(c) of the Act directs the Department to avoid using—in its NME normal value calculations—“any prices” which the agency “has reason to believe or suspect may be dumped or subsidized prices.” 73
- Petitioner contends the Department found in other proceedings that Korea “maintains broadly available, non-industry specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from this country may be subsidized.” 74
- Furthermore, Petitioner argues the Department is under no obligation to conduct a formal investigation to ensure that such prices are not subsidized. 75
- Petitioner rebuts that while CSWG relies on the “specific and objective evidence” of subsidies requirement articulated by the CIT in Fuyao II, the CIT has recognized that the Fuyao II test has generated controversy and it is yet to be resolved. Nonetheless, Petitioner argues there is substantial evidence that the Fuyao II test has been satisfied because evidence indicates that Korea maintains a number of generally available export subsidies in CORE from Korea,76 Refrigerator-Freezer from Korea,77 NOES from

69 See Carbon Steel Plate from Romania.
70 See China Nat’l Machinery, 293 F. Supp. 2d at 1336; see Zhejiang Machinery, 473 F. Supp. 2d at 1369.
72 See Zhejiang Machinery, 473 F. Supp. 2d at 1369.
74 See Certain Activated Carbon from China, 76 FR at 23987.
76 See Core from Korea.
77 See Refrigerator-Freezers from Korea, 77 FR at 17414-416.
Korea,\textsuperscript{78} and Welded Line Pipe from Korea\textsuperscript{79} that applied to the steel plate and flange suppliers during the POR.

- Petitioner claims the third prong of the \textit{Fuyao II} test is met because the record contains explicit evidence that CSWG’s suppliers themselves either exported the inputs at issue or were aware that the inputs were intended for export. Although CSWG is headquartered in Korea, it does not produce any wind towers in Korea, and has production facilities only in China, Vietnam, and Canada. As such, to the extent that CSWG buys inputs such as steel plate and flanges in Korea, it did so with the specific intent to export those flanges to other countries, rather than consuming those flanges within Korea.

- Petitioner also claims that CSWG’s steel plate and flange suppliers were undoubtedly aware that the steel plate and flanges were not intended for domestic consumption. CSWG’s sales invoice from its flange supplier explicitly references the wind farm project. Additionally, the certificate of origin for CSWG’s steel plate explicitly lists the manufacturer as the exporter, identifies that the shipment is going to Vietnam, and is signed by the manufacturer as the exporter.

- Petitioner alleges that publicly available evidence suggests that the suppliers are large exporters of steel and would be eligible for the subsidies.

- Petitioner rebuts that, contrary to CSWG assertions, the structure of CSWG purchase does not present a case of first impression and the Department previously rejected such ME prices under substantially similar circumstances.

\textit{CSWG}

- CSWG argues the Department incorrectly rejected the ME prices for domestic purchases of steel inputs from Korean suppliers in the \textit{Preliminary Results} because the inputs are based on purely domestic sales transactions with unaffiliated Korean suppliers that cannot be tainted by generally available export subsidies.\textsuperscript{80}

- CSWG argues the Department erred as a matter of law when it rejected the ME prices from Korea because the facts in this instant review differ from all prior cases upon which the Department relies because:
  - First, these are not export sales transactions because the major raw materials are not procured by CS Wind Vietnam from Vietnam but rather CS Wind Corporation purchased these raw materials directly from domestic suppliers.
  - Second, these are not export sales transactions because CS Wind Corporation purchased the steel plate, flanges, and door frame steel from unaffiliated Korean suppliers pursuant to domestic sales transactions with a domestic delivery and assessment of domestic VAT.
  - Third, there is no “export price” because the domestically purchased materials are supplied to CS Wind Vietnam free of charge by CS Wind Corporation pursuant to tolling contracts and are all owned by CS Wind Corporation under the tolling provisions.
  - Fourth, to adjust the domestic arm’s length price to a delivered price, CS Wind Corporation raised the domestic ME prices by all relevant delivery/movement

\textsuperscript{78} See NOES from Korea.
\textsuperscript{79} See Welded Line Pipe from Korea, 80 FR at 14,909-920.
\textsuperscript{80} See CSWG Case Brief at 4.
expenses incurred in transporting the materials to the production site. Such an
adjustment is not required for a purely export sales price.
- Fifth, according to an affidavit from the Manager of the Finance Department, CS
  Wind Corporation neither applied for nor received any export subsidies of any
  kind on the export materials or finished goods during the POR.
- Sixth, CS Wind Corporation neither applied for nor received any export subsidies
  of any kind on the export of materials or finished goods during the POR.

- CSWG argues that the facts and reasoning from the investigation are inapposite because
  the facts in the instant review are different from the investigation:
  - First, there are no trading companies involved in the transaction; rather the inputs
    were all purchased from CS Wind Corporation.
  - Second, none of the Korea suppliers in this review were represented by a foreign
    trading company, as was the manufacturer of flanges in the original investigation,
    indicating the possibility of an export transaction.
  - Third, export documents and certificates of origin show CS Wind Corporation as
    the exporter of record on all exports of these materials to CS Wind Vietnam.
  - Fourth, CS Wind Corporation obtained the country of origin certificates, they are
    signed by CS Wind Corporation company officials, and CS Wind Corporation is
    listed as both the exporter and the consignee—in no instance is the unaffiliated
    Korea supplier listed as the exporter.
  - Fifth, the unaffiliated Korea supplier did not obtain or sign the certificates of
    origin.
  - Sixth, on none of the submitted mill certificates supplied for these inputs is the
    U.S. customer’s name, the project name or CS Wind Vietnam referenced. Thus,
    unlike the investigation, there is no documentary evidence in this review
    indicating that the manufacturers of the steel inputs had knowledge that the inputs
    they were producing were destined for exportation or were involved in the
    ultimate export transaction.

- CSWG argues that with respect to CORE from Korea, each of the subsidy programs cited
  to by the Department in the Preliminary Results and alluded to in Petitioner’s case brief
  are contingent upon export performance which clearly did not occur with respect to these
  domestic sales transactions.
- According to CSWG, the Department has not provided any specific or objective evidence
  under the Fuyao II precedent. With respect to the first prong, the Department has not met
  the court-directed mandate that it place on the record “substantial, specific, and objective
  evidence in support of its suspicion that the prices are distorted.” Unlike other NME
  cases such as Color Television Receivers from China, CSWG asserts that the Department
  has not placed on the record specific factual evidence of export subsidies provided to
  specific industries and/or input. According to CSWG, CORE from Korea, the sole case
  relied upon by the Department for Korea for the preliminary results, has been shown to
  not be applicable to the unique facts in this case.
- With respect to the second prong, as in Sichuan Changhong, CSWG argues the
  Department has failed to show that the subsidies existed in the supplier countries during
  the period of review.

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81 See Coated Paper from China (citing to Fuyao Glass I and China Nat’l Machinery).
• CSWG contends that, as in *Sichuan Changhong*, the Department has failed to establish the third prong of the *Fuyao II* test due to a factual impossibility—domestic sales cannot be eligible for export subsidies. Further, as these were domestic transactions, the interested party would not be eligible. CSWG argues that regardless of the status of *Fuyao II*, Petitioner has failed to demonstrate how domestic prices can be tainted by export subsidies.

• CSWG disagrees with Petitioner’s attempts to satisfy the third prong of the *Fuyao II* test by citing to a litany of accolades received by CSWG’s Korean supplier for its export activities, because the supplier simply is not an eligible party to receive export subsidies with respect to the steel inputs at issue since the supplier did not export the steel components to Vietnam.

• CSWG disagrees with Petitioner’s attempt to satisfy the third prong of the *Fuyao II* test by making a reference to the participation of CSWG’s steel plate supplier in the Mutual Growth Program because the program is not a program under which the steel plate supplier receives government export subsidies.

• CSWG argues the Department’s policy of rejecting ME input prices from countries with generally available export subsidies, “like most presumptions…is rebuttable.” CSWG argues it has rebutted the presumption of export subsidies by specific factual evidence: (1) evidence that CSWG purchased these inputs from vendors in Korea in purely domestic transactions which do not qualify under any program for export benefits; and (2) evidence that CSWG, the purchaser/exporter, does not apply for or receive any export subsidies (*i.e.*, financial statements which show no receipt of any government benefits, least of all export subsidies). Further CSWG asserts that an examination of the financial statements of CS Wind Corporation and CS Wind Vietnam reveal that neither company received countervailable subsidies during the POR. Thus, the Department’s determination in *Nails from China* is equally applicable to this case.

**Department’s Position:** We disagree with CSWG’s contention that there is no evidence in support of the Department’s reason to believe or suspect that the reported prices may be distorted by export subsidies. We also find that CSWG’s evidence is insufficient to show that the Department does not have reason to believe or suspect that CSWG’s steel inputs suppliers could have benefitted from the widely available export subsidies. In the Preliminary Results, the Department noted that CSWG purchased several of its inputs domestically from Korean suppliers. Nonetheless, the Department explained that because those inputs were destined for exportation from Korea, and Korea is a country that maintains broadly, available, non-industry specific subsidies, we have disregarded the prices because we have reason to believe or suspect that the source data may be subsidized and, therefore, may be distorted. As a result, we relied on surrogate values to value the inputs exported from Korea.

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 773(c) of the Act. The relevant amendment to the Act is applicable to all determinations made on or after

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82 *See United States Steel Group.*
83 *See Prelim SV Memorandum at 9.*
August 6, 2015, and, therefore, applies to this review. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available surrogates to value FOPs, but when a producer sources an input from an ME and pays for it in an ME currency, the Department will normally value FOPs using the actual price paid for the input. However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the ME purchase prices and use surrogate values to determine NV. New section 773(c)(5) of the Act states that "{i}n valuing the factors of production under paragraph (1) for the subject merchandise, the administering authority may disregard price or cost values without further investigation if the administering authority has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those price or cost values or if those price or cost values were subject to an antidumping duty order." The Department has previously found that it is appropriate to disregard prices from Korea because we have determined that Korea maintains broadly available, non-industry specific export subsidies. Based on the existence of subsidy programs that are generally available to all exporters and producers in Korea at the time of the POR, the Department finds that it is reasonable to infer that all exporters from Korea may have benefitted from these subsidies. We note that, consistent with the Act, in avoiding the use of prices that may be subsidized, the Department need not conduct further investigation to ensure that such prices are not subsidized, but rather relies on information that is available at the time of its determination.

For the final results, the Department continues to apply its longstanding practice of disregarding ME prices from Korea, consistent with the Act. The Department is disregarding the input purchases because we have determined that broadly available export subsidies existed in Korea. The inputs were produced in Korea and exported from Korea. The Department finds CSWG’s assertion that the nature of the domestic transactions between the company and its Korean steel input suppliers, is in and of itself, evidence that the exportation of the steel inputs could not have benefitted from broadly, non-industry specific export subsidies lacks merit. CSWG’s claim is similar to its claim in the investigation where CSWG argued that neither CSWG nor its manufacturers received or were eligible to receive any export subsidies based on these “domestic” purchases. According to CSWG, the Department failed to provide any substantial, specific, and objective evidence in support of their suspicion that its suppliers could have received benefits. In CS Wind Co., however, the CIT affirmed the Department’s finding in the interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

87 Section 505(b) of the TPEA.
88 See, e.g., CORE from Korea, 17 and 19-20; Bottom Mount Refrigerator-Freezers from Korea; NOES from Korea; Welded Line Pipe from Korea.
90 See CSWG September 10, 2014 submission at 14-19.
91 See CSWG September 10, 2014 submission at 14-19.
92 See CSW Case Brief 4-6; see also CSWG Rebuttal Brief 126-129.
93 See CS Wind Co., 971 F. Supp. 2d at 1291.
94 Id., 971 F. Supp. 2d at 1291.
investigation that there was reason to believe or suspect that CSWGs steel inputs purchased in Korea were subsidized despite CSWG’s claims that these were “domestic” transactions:

{CSWG}’s evidence, while entitled to some weight, is insufficient to show that {the Department’s finding} was not supported by substantial evidence. Although these inputs were purchased in South Korea by CS Wind Corp., also located in South Korea, and then exported to CS Wind Vietnam by CS Wind Corp., the transaction documents support {the Department’s} determination that these documents could have been used by suppliers to show that an export transaction occurred, making them eligible for the subsidy programs. The record shows that two manufacturers of these inputs identified themselves as the “Exporter” of their products on the certificates of origin. These documents also support the findings that the manufacturers were aware that these products would be exported to Vietnam and that the sales could be classified as export transactions through an intermediary, CS Wind Corp. Thus, {the Department} was justified in its determination that “all parties involved…had prior knowledge that these inputs were destined for exportation.” As a result, it was not unreasonable for {the Department} to determine that the supplier may have benefitted from the widely available export subsidies based on these “domestic” transactions that {the Department} permissibly found were export transactions.94

Similar to the investigation, this record also includes transactional documents that show that an export transaction occurred, which would make them eligible for the export subsidy program. The record includes the certificate of origin, packing list, and bill of lading for CSWG’s steel plate supplier which explicitly lists the supplier as the exporter, identifies that the shipment is going to Vietnam, and is signed by the supplier as the exporter.95 The record also includes CSWG’s sales invoice from its flange supplier which explicitly references the U.S. wind farm project.96 Further, there is evidence that CSWG’s flange supplier is eligible to receive export subsidies since that the flange supplier has received past government awards for its substantial exports and, in fact, CSWG’s steel plate supplier received countervailable export subsidies in 2012.97 These documents support the findings that the unaffiliated manufacturers were aware that these products would be exported to Vietnam.

Such evidence contradicts CSWG’s argument that the transactions between CSWG and its Korean suppliers were “purely domestic sales transaction” that could not be tainted by generally available export subsidies. As such, and based on the evidence on the record, we find a reasonable basis to disregard the Korean prices. Further, we find that CSWG’s evidence is insufficient to show that CSWG’s steel inputs suppliers could not have benefitted from the widely available export subsidies because the record includes evidence that demonstrates that its suppliers were eligible to receive the generally available export subsidies and it would have been against their interest not to have taken advantage of them. Specifically, the Department finds that the suppliers’ domestic VAT invoice and accounting records are insufficient to show that the suppliers are ineligible to receive the widely available export subsidies.

94 Id., 971 F. Supp. 2d at 1293-94.
95 See CSWG September 10, 2014 submission at Exhibit S2-16 and S2-17.
96 See CSWG June 26, 2014 submission at Exhibit D-6B.
97 See Petitioner July 10, 2014 submission at Exhibit 7; see also NOES from Korea.
With respect to CSWG’s reliance on *Fuyao II*, we note that the TPEA instructs that the Department may disregard prices or costs without further investigation if, as here, the Department has determined that broadly available export subsidies existed. We also note that, in numerous determinations, the Department has disregarded ME purchases from countries, such as, Korea, Thailand, and Indonesia based on the Department’s prior determinations that broadly available, non-industry specific export subsidies exist in those countries. For the final results of this review, the Department, consistent with its longstanding practice and section 773(c)(5) of the Act, has disregarded prices from Korea because prices from this country, as indicated above, may be distorted as a result of broadly available export subsidies.

For the reasons noted above, we continue to find that the Korean prices provided by CSWG for its inputs purchased in Korea and exported from Korea may have been distorted by broadly available export subsidies in Korea. We have considered the evidence provided by CSWG to show that CSWG’s suppliers from Korea could not have benefitted from broadly available export subsidies, but find this evidence insufficient for the reasons noted above. Consistent with the *Preliminary Results* and *CS Wind Co.*, for the final results, the Department continues to use surrogate values, in lieu of Korean prices, for the valuation of CSWG’s inputs from Korea. For further details regarding the surrogate values used for these inputs, see the Final SV Memorandum.

**Comment 4: Financial Statements**

Petitioner submitted the following financial statements: (1) ISGEC for the FY ending September 30, 2013; (2) L&T for the FY ending March 31, 2014; (3) Pipavav for the FY ending March 31, 2014; and (4) Elecon for the FY ending March 31, 2014.

CSWG submitted the following financial statements: (1) Ganges for the FY ending March 31, 2014; (2) Ganges for the FY ending March 31, 2013; (3) Ganges for the FY ending March 31, 2011; and (4) TJSV for the FY ending March 31, 2013; (5) Suzlon for the FY ending March 31, 2012; (6) Suzlon for the FY ending March 31, 2011; and (7) Suzlon for the FY ending March 31, 2010.

In the *Preliminary Results*, the Department valued selling, general, and administrative expenses, overhead, and profit using Ganges’ audited financial statements for the FY ending March 31, 2014. For the final determination, the Department has used TJSV’s FY ending March 31, 2013 audited financial statements to calculate the surrogate financial ratios because TJSV is a producer of comparable merchandise, and the company’s publicly available financial statements are audited, complete, contemporaneous, show a profit, and reflect no evidence of subsidies found by the Department to be countervailable.

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99 CSWG has not argued that any of Suzlon’s financial statements should be used as a basis for the surrogate ratios.
Comment 4.A. ISGEC, L&T, Elecon, and Pipavav

Petitioner

- The Department should use ISGEC’s FY ending September 30, 2013 financial statements, or, in the alternative, the FY ending March 31, 2013 financial statements of Pipavav, L&T, or Elecon because they are producers of comparable merchandise and their financial statement are publicly available.
- ISGEC produces a wide range of tubular structures that are fabricated from steel plate and must be welded, formed, and fitted out.
- There is no reference in ISGEC’s FY ending September 30, 2013 financial statements to specific actionable subsidies since the financial statements merely references an “export incentive” line item; as such, CSWG attempt to link the EPCG scheme and the Advance Authorization with the line item “Export Incentives” lacks merit. With regard to EPCG, Petitioner claims CSWG appears to rely on a line item that refers to bonds executed against EPCG licenses as evidence of distortion; however, Petitioner asserts that contingent liabilities do not represent actual liabilities as recorded in ISGEC’s books.
- CSWG’s submitted minutes from various DGFT meetings indicate that the committee either deferred the issue related to an old license or application for a license, or approved licenses outside the POR. It clearly does not demonstrate that ISGEC’s financial performance was distorted by subsidies.
- Alternatively, the Department should select Pipavav’s FY ending March 31, 2013 financial statements because it produces large-scale, heavy-duty steel ships with steel plate as the main input component.
- Pipavav’s FY ending March 31, 2013 financial statements are not distorted by subsidies because the documents that CSWG placed on the record with respect to shipbuilding provide no insight into the nature of any alleged subsidy scheme during the POR and predate the POR by several years.
- While Pipavav may have operated in a SEZ and the Department has previously found the SEZ Act to be countervailable, but Pipavav’s FY ending March 31, 2013 financial statements lack a specific line item with respect to SEZ benefits received and the Department should therefore use the financial statements.100
- The meeting minutes of the DGFT committee that CSWG placed on the record only show that the DGFT deferred an application from Pipavav; it does not indicate that Pipavav’s FY ending March 31, 2013 financial statements are distorted by subsidies.
- The Department should select L&T’s FY ending March 31, 2013 financial statements because L&T produces comparable merchandise (i.e., tubular reactors and large columns for the oil and gas sector, tubular separators, large boilers, coke drums, and other large tubular steel products for the petrochemical and fertilizer industries) and operates a world-class fabrication facility.
- Like Pipavav, L&T may have operated in a SEZ but L&T’s FY ending March 31, 2013 financial statements do not identify any specific line item showing that it received SEZ benefits. In addition, Petitioner claims the DGFT meeting minutes appear to all be from

100 See, e.g., Certain Steel Nails from China at Comment 2.
2007/2008, almost five years before the POR; thus, these minutes are not indicative of any benefits that L&T may or may not have received during the POR.

- The Department should select Elecon’s FY ending March 31, 2013 financial statements because it is a producer of comparable merchandise (i.e., heavy industrial steel fabricator and Elecon’s divisions manufacture industrial gears and large scale equipment for the steel, cement, coal, power, and other industrial sectors). According to Petitioner, Elecon’s FY ending March 31, 2013 financial statements do not indicate that they are distorted by CVD subsidies because the exhibit CSWG placed on the record shows that Elecon participated in and received benefits under the CVD Advance Licensing program before the POR.

**CSWG**

- The Department should reject the financial statements of ISGEC, L&T, Elecon, and Pipavav because none of these four companies is a producer of identical and comparable merchandise. CSWG contends that while the statute does not define “comparable merchandise,” the Department’s practice where appropriate, is to apply a three-prong test that considers: (1) physical characteristics; (2) end uses; and (3) production processes. CSWG argue that these companies do not produce identical or comparable merchandise under the Department’s established three-part test.

- In the final results of the investigation, the Department rejected Elecon and L&T financial statements. Since the administrative record regarding production of “identical or comparable” merchandise by these two surrogate companies is not different than the record of the investigation, CSWG argues the Department should reach the identical conclusion.

- ISGEC’s production experience is very different from CSWG because the production experience, physical characteristics, and end-uses of pressure vessels and boilers are very different from wind towers. CSWG alleges that ISGEC’s financial statements are not suitable for consideration as surrogate financial statements because ISGEC’s principal line of business is trading goods, not manufacturing goods. CSWG state that ISGEC’s financial statements are distorted because the data is insufficiently disaggregated.

- Pipavav is a shipbuilding company and wind towers are distinctly different in terms of physical characteristics, production processes, and end uses. Moreover, CSWG contends that Pipavav’s financial statements are unsuitable because Pipavav’s overhead, SG&A, and profit ratios are distorted by Pipavav’s overwhelming focus on trading activities.

- Elecon, L&T, and Pipavav’s financial statements are not usable because they are distorted by CVD subsidies. Moreover, CSWG asserts that as a shipbuilding company, Pipavav receives a direct 30 percent subsidy benefit (on the value of exports) from the government upon export of goods. CSWG claims that L&T and Pipavav received numerous benefits under the EPCG and Advance Authorization license schemes. Further, CSWG asserts that Elecon participated in and received benefits under the countervailable Advance Authorization license program.

- **OTRs from China** and **Frozen Fish Fillets from Vietnam** fail to lend support to Petitioner’s argument regarding the financials of ISGEC, L&T, and Pipavav since specific CVD subsidy programs are enumerated within the financial statements of each of these companies.

- In **Circular Welded Carbon Pipe from China**, the Department held that requiring conclusive proof of receipt of a CVD benefit was necessary before rejecting a financial statement.

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101 See Certain Woven Electric Blankets from China.
According to CSWG, this decision, however, is an outlier, and is inconsistent with its settled policy of applying the Congressionally mandated reason to believe or suspect standard to determine whether a subsidy may have been received.

- **Dupont Teijin Films** is distinguishable from this case because the Court approved the Department’s decision to apply the “least-distorted” financial, because the alternative financial statements were even more distorted by CVD subsidies. According to CSWG, the record in this proceeding contains two alternative financial statements, Ganges and TJSV, which undeniably are not distorted by CVD subsidies.

- Petitioner’s argument that ISGEC’s financial statement is undistorted fails to distinguish the facts in ISGEC’s FY ending in September 30, 2013 financial statements from the facts in the investigation in the context of an identical contingent liability directly based on EPCG benefits program in the ISGEC financial statements.

- The record shows that during the POR, Pipavav and L&T had operations in SEZ. CSWG alleges their financial statements are presumed to have been distorted by CVD subsidy benefits and are not useable because the Department has expressly concluded that these benefits constitute CVD subsidies in **PET Film from India**.

- Petitioner’s reliance on **Certain Steel Nails from China** should be rejected because the fact that these statements reference countervailable programs constitutes sufficient reason for the Department to have reasonable cause to believe or suspect that the statements are distorted.

**Department’s Position:** The Department agrees with CSWG, in part. We have not relied on the financial statements of L&T, Pipavav, and Elecon because we find they are not producers of comparable merchandise, and there are other reliable data on the record for producers of comparable merchandise (i.e., TJSV). With respect to ISGEC, we find ISGEC’s FY ending March 31, 2013 financial statements are not the best available information because the statements reflect evidence of countervailable subsidies, and there are other more reliable and representative data available on the record (i.e., TJSV FY ending March 31, 2013 financial statements).

Section 773(c) of the Act directs the Department to base the valuation of the factors of production “on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate.” In choosing surrogate financial ratios, it is the Department’s practice to use data from ME surrogate companies in the primary surrogate country based on the “specificity, contemporaneity, and quality of the data.”102 In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit. While the statute does not define “comparable merchandise,” it is the Department’s practice, where appropriate, to apply a three-prong test that considers: 1) physical characteristics; 2) end uses; and 3) production processes.103

Consistent with section 773(c)(5) of the Act, the Department may disregard prices or costs without further investigation if the Department has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those prices or costs. Accordingly, consistent with the Act, and pursuant to its practice, the Department

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102 [See Lined Paper Products from China.](#)

103 [See Certain Woven Electric Blankets from China.](#)
calculates the surrogate financial statements based on contemporaneous financial statements, when available, from companies producing comparable merchandise in the surrogate country. However, where the Department believes that the company producing comparable merchandise may have received actionable subsidies, the agency may consider that the financial ratios derived from that company’s financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, the Department does not rely on financial statements where there is evidence that the company has received countervailable subsidies and there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.

*ISGEC*

The Department has reviewed ISGEC’s FY ending September 30, 2013 financial statements and has determined that there is evidence that ISGEC benefitted from subsidies the Department has previously found to be countervailable, specifically, the EPCG scheme. According to Petitioner, there is no reference in ISGEC’s FY ending September 30, 2013 financial statements to specific actionable subsidies because the line item that refers to bonds executed against EPCG licenses falls under the heading “contingent liabilities,” which Petitioner claims do not represent actual liabilities as recorded in ISGEC’s books. We disagree for the same reasons as stated in the final results of the investigation. Specifically, in the investigation, we disregarded ISGEC’s financial statements because Footnote 1 of schedule X accompanying the financial statements list, as a contingent liability, “bonds executed in favour of President of India against EPCG license.” The Department explained that the EPCG is a program the Department has previously found to be countervailable and that it disagreed with Petitioner’s argument that, because the EPCG reference is shown under the heading “contingent liability,” there is no corresponding cost. We stated that Indian generally accepted accounting principles require a contingent liability to be disclosed “unless the possibility of an outflow of resources embodying economic benefits is remote.”

Similarly, in this review, Note 23 accompanying ISGEC’s FY ending September 30, 2013 financial statements list, as a contingent liability, “bonds executed in favour of President of India against EPCG license.” Petitioner has not distinguished the countervailable nature of the EPCG license program in these financial statements from the financial statements used in the investigation. Therefore, consistent with the final results of the investigation, we find that ISGEC’s FY ending September 30, 2013 financial statements provide evidence of having benefitted from subsidies because Indian generally accepted accounting principles require a contingent liability to be disclosed unless the possibility of an outflow of resources embodying economic benefits is remote and we continue to disregard ISGEC’s FY ending September 30, 2013 financial statements because more reliable data is on the record.

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104 See OCTG from China.
105 Id.
106 See Certain Woven Electric Blankets from China.
107 See Polyethylene Terephthalate Film, Sheet, and Strip from India.
108 See Petitioner Case Brief at 73-74.
109 See Wind Towers from Vietnam.
We examined L&T’s FY ending March 31, 2014 financial statements and, consistent with our findings from the investigation, we have not relied on L&T financial statements because L&T is not a producer of comparable merchandise and reliable, complete financial statements of a producer of comparable merchandise are available on the record of this case. L&T’s FY ending March 31, 2014 financial statements demonstrates it is involved in the same large number of varied business segments as in the investigation: Infrastructure (e.g., roads, metro rail, and rail ways); heavy engineering (e.g., custom designed, engineered equipment and systems to the fertilizer, refinery, petrochemical, chemical, oil and gas, thermal and nuclear power, and aerospace industries); hydrocarbon; thermal power; metallurgical and material handling; electrical & automation; machinery & industrial products (e.g. machinery for constructions and mining, paper and pulp, steel, rubber and plastic industries); information technology; integrated engineering; and financial services. Similar to the investigation, we found no similarities in the end uses of the merchandise produced by L&T and the subject merchandise. The end use of a utility scale wind tower is to support wind turbine components. L&T’s merchandise is further incorporated into other equipment (e.g., switchgears and valves) or used for construction of agricultural purposes (e.g., earthmoving and agricultural machinery), industrial or chemical processing (e.g., rubber processing machinery and chemical processing equipment), industrial monitoring (e.g., electronic monitoring systems), or nuclear energy generation.

Consistent with the investigation, we also find that the production processes used by CSWG and L&T are not similar. The merchandise produced by L&T necessitates a higher level of machining (e.g., switchgears, valves processing equipment), technical (e.g., chemical processing and nuclear energy generation equipment), and electronic processing (e.g., industrial electronic control panels) than the subject merchandise. The production processes used by CSWG involve cutting and beveling of steel plates, bending and welding of steel plates, the welding of flanges to steel plate, fitting up of different skirts, circular seam welding, shot-blasting, painting, assembling and attaching of internal components, and packing. Although the Department is not required to duplicate the exact production experience of CSWG, we also find it unreasonable to rely on L&T’s production experience because it is significantly more diverse in comparison to CSWG’s production experience used to manufacture the subject merchandise and more reasonable specific information is on the record. For instance, L&T’s consolidated financial statements contain combined financial information from 148 related parties, 6 associate companies, and 12 joint-ventures (other than associate companies). Its subsidiaries engage in a wide range of activities: electronics, valves, solar, shipping, infrastructure, power, insurance, finance, realty, etc. We also note that L&T’s financial statements demonstrate that L&T is engaged in construction activities instead of the production of goods. Specifically, Note (K) “Revenue from Operations” in its financial statements indicates that during the April 1, 2013-March 31, 2014, L&T earned 47,861.55 Crore from its “Construction and project-related activity” while the company only earned 6176.82 Crore from its “Manufacturing and trading

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111 See Petitioner February 2, 2015 submission at Exhibit 18.
112 See Wind Towers from Vietnam at Comment 2.
113 Id.
114 See CSWG June 26, 2014 submission at 5-7.
115 See Nation Ford, 166 F. 3d at 1377.
activity.” In other words, “manufacturing and trading of goods” in the aggregate was only about 13 percent of the revenue the company gained through civil construction and project-related activities. As such, similar to the investigation, we find that L&T’s corporate and production experiences are more diverse and less specific to CSWG and that L&T’s financial statements are not the best information available for the purpose of calculating financial ratios.

Elecon

We examined Elecon’s FY ending in March 31, 2013 financial statements and website that Petitioner placed on the record. These exhibits demonstrate that Elecon produces the same merchandise as it did in the investigation: wind mill gearboxes, industrial gears, and large scale equipment for the steel, cement, coal, power, and other industrial sectors. In the final determination of the investigation, the Department rejected Elecon’s financial statements because we found that Elecon did not produce comparable merchandise:

In addition to windmill gearboxes, Elecon also manufactures industrial gears and gear boxes for the sugar, cement, steel, fertilizer, plastic, extrusion and rubber industries; bulk material handling equipment (e.g., conveyors) and power transmission solutions for the power, mining, steel, plates, sugar, defense and cement industries; and various products that are offered to various industrial including power, chemicals, steel, plastic, elevators, palm oil, marine engineering, cement, sugar, mining, petroleum, coal handling, and fertilizers. We find that the end uses of these products are not similar to the end use of the utility wind towers. We also find that the merchandise produced by Elecon dictates a higher level of machining (e.g., gears and gear boxes) and technical processing (e.g., power transmission equipment) than the subject merchandise. As well, we find that the physical characteristics of gears, bear boxes, bulk material handling equipment, power transmission solutions and products for the various industries listed above to be dissimilar to utility scale wind towers (i.e., steel plate welded together to make a tubular structure). Therefore, we find it unreasonable to rely on Elecon’s production experience as a surrogate for CSWG because it does not produce comparable merchandise.

Petitioner has not distinguished the facts regarding Elecon’s products and production experience during this review from the investigation. Accordingly, we reach the same conclusion as the investigation and continue to find that Elecon is not a producer of comparable merchandise because the end uses, production process, and physical characteristics of Elecon’s products are not similar to CSWG’s utility scale wind towers; therefore, we find it unreasonable to rely on Elecon’s financial statements as a surrogate financial statement.

Pipavav

Petitioner argues Pipavav is a producer of comparable merchandise because it specializes in producing large-scale, heavy duty steel ships--with steel plate as the main input component. According to Petitioner, “like the process for producing utility scale wind towers, Pipavav engages in substantial fabrication operation--the steel plate is rolled, welded, and fitted out with items such as flanges, ladders, doors, landing platforms, elevators, internal lighting, electrical cabling, and other components.” We disagree with Petitioner that Pipavav is a producer of

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116 See Petitioner February 2, 2015 submission at Exhibit 18.
117 See, e.g., Frozen Warmwater Shrimp from China (2009) at Comment 1.
118 See Wind Towers from Vietnam at Comment 2.
comparable merchandise because we find that heavy duty steel ships and wind towers are different in terms of physical characteristics, production processes and end uses. First, we find that ships are physically different from utility scale wind towers because ships are not tubular vertical structures like utility scale wind towers. Next, we find that Petitioner provides no support that Pipavav’s production process is similar to CSWG production processes. Finally, we do not find the end uses to be similar because utility scale wind towers are not used for transporting goods and people in water. As such, we find it unreasonable to rely on Pipavav’s financial statements as a surrogate financial statement.

Comment 4.B. Ganges, TJSV, and Suzlon

Petitioner

- The Department should reject Ganges’ FY ending March 31, 2014 financial statements because the P&L statements are not publicly available. Petitioner contends that, consistent with Floor Standing, Metal Top Ironing Tables from China\(^{119}\) and Yantai Xinke,\(^{120}\) the Department should reject Ganges’s FY ending March 31, 2014 financial statements because the complete financial statements are not publicly available.

- The Department should reject Ganges’ FY ending March 31, 2014 financial statements because Ganges is not a producer of identical or comparable merchandise. According to Petitioner, Exhibit 15(c) of CWG’s August 6, 2014 submission does not reference any types of towers that Ganges produces.

- Ganges’ website indicates that it produces angular and tubular towers for the telecommunications, power transmission and distribution, solar, rail, and wind industries, but photographs on Ganges’ website only show angular or lattice towers for windmills. According to Petitioner, the Department should reject Ganges financial FY ending March 31, 2014 statements because mere capability of producing potentially comparable merchandise is not enough.

- TJSV’s financial statements are not reliable since they are not signed. Petitioner argues that while CSWG claims that “the signature of the auditor is not seen here presumably because the report may have been digitally signed,” there is no evidence that TJSV’s FY ending March 31, 2013 financial statements were electronically signed.

- Record evidence does not demonstrate the TJSV is a producer of identical merchandise because nowhere in TJSV’s FY ending March 31, 2013 financial statements do they reference wind towers, or even just “towers.” Moreover, Petitioner argues the website printouts state that the typical fabrication projects that TJSV undertakes only include “structural frames, Ducts, columns, hand railings and Gratings.” Petitioner rebuts that, to the extent that TJSV is capable of manufacturing utility scale wind towers, mere capability is insufficient because similar to Yangtai Xinke, the financial statements and website printouts provide no information or evidence on the importance of utility scale wind tower production to its financial statements.\(^{121}\)

- TJSV’s FY ending March 31, 2013 financial statements are distorted by CVD subsidies because the record indicates that TJSV benefitted from the “capital subsidy” scheme in 2013-

\(^{119}\) See Floor-Standing Metal -Top Ironing Tables from China at Comment 1.

\(^{120}\) See Yantai Xinke.

\(^{121}\) Id. at 16-17.
According to Petitioner, the Department has previously determined that the “capital subsidy” scheme constitutes a CVD subsidy. Petitioner argues that while CSWG claims the source of the chart has not been provided, the cover letter to Petitioner’s submission clearly indicates that the information was obtained from a Government of India website. Petitioner also argues that CSWG’s claim that the subsidy benefit is not relevant to the FY ending March 31, 2013 financial statements lacks merit because it ignores the fact that the capital subsidy scheme benefits could very well have been received in the overlapping 2013 period, rendering it directly distortive of TJSV’s FY ending March 31, 2013 financial statements.

- TJSV’s FY ending March 31, 2013 financial statements cover only approximately one-half months of the POR. Because there are other more contemporaneous, reliable, and publicly available financial statements from producers of comparable merchandise, the Department should reject TJSV’s non-contemporaneous financial statements.

CSWG

- The Department incorrectly calculated and applied Ganges’ financial ratio because it did not adjust the manufacturing overhead ratio to exclude the erection and civil income as well as the erection and civil expenses.
- The Department should use TJSV’s FY ending March 31, 2013 financial statements with Ganges FY ending March 31, 2014 financial statements because, contrary to the Preliminary Results, TJSV’s financial statements contain a complete and valid auditor’s report and are untainted by subsidies. According to CSWG, the signature of the auditor is not seen here, presumably because the report may have been digitally signed. Additionally, record evidence also indicates that TJSV is a producer of identical merchandise (i.e., wind mill towers or windmill structures).
- The Department should select TJSV’s financial statements because Petitioner’s chart purporting to show the names of companies which availed capital subsidies benefits during the 2013-2014 fails to provide the source of the chart. As such, it is unclear if the chart is publicly available or if it is even authentic.
- The Department should not reject Ganges’ financial statements on grounds of its alleged lack of public availability or non-comparable production process. CSWG contends that Petitioner fails to establish that Ganges’ P&L statement is not publicly available because neither Petitioner nor its paid consultant cite to any independent evidence in support of the lack of public availability of Ganges financial statements. According to CSWG, the Department used Ganges financial statements in the final results of the original investigation and was not challenged by Petitioner on similar grounds.
- Even presuming Petitioner’s allegations are correct, Since Hardware supports continued reliance on the Ganges’ financial statements because the Department’s policy is to refrain from applying a rigorous standard of public availability in selecting financial statements. CSWG argues the Department and interested parties are familiar with Ganges’ financial statements because they were used in the Final Results of the original investigation and neither their provenance nor their public availability was called into question at that time.

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122 See PET Film from India, 71 FR 7536.
123 See Wind Towers from Vietnam.
The judicial decisions cited by Petitioner in support of its public availability argument are distinguishable on their facts because in *Home Products Int’l*, the Court approved the Department’s decision to reject financial statements whose P&L statement were not publicly available because the record contained suitable alternative financial statements that were qualitatively equivalent. In contrast, in the instant case, all of the financial statements submitted by Petitioner are unsuitable because none of the companies produce comparable merchandise and because all of these statements are distorted by CVD subsidies. Additionally, CSWG rebuts that, likewise, Petitioner’s reliance on *Yantai Xinke* is distinguishable since, unlike the instant case, the financial statements rejected by the Department in that proceeding had not been used by the Department in any prior proceeding.

The issue of whether Ganges produces identical or comparable merchandise was firmly settled in the initial investigation, and was not challenged by Petitioner in the CIT. In view of this decision, the Department should reject Petitioner’s arguments because the fact that Ganges does not have photographs of tubular towers on its website cannot possibly mean that Ganges does not produce tubular towers, as specifically stated on the website.

Ganges’ FY ending March 31, 2014 financial statements (Note 16) clearly show that Ganges’ major revenue arises from selling towers. CSWG argues that evidence that these towers include identical merchandise--windmill towers--is provided from Ganges’ website information.

*Yantai Xinke* is distinguishable on the facts because in that case, the CIT agreed with the Department that an inconsistency between financial statements and company website called into question the representation that the company produced certain products. In contrast, in the instant case, there is no inconsistency between Ganges’ financial statements and its website information because the website merely clarifies the exact type of towers produced by Ganges that are specifically mentioned in its financial statements.

There is not a scintilla of evidence regarding receipt of subsides availed by Ganges and TJSV’s financial statements.

TJSV’s financial statements afford the Department with a suitable option to value financial ratios with accuracy because they contain a complete auditor’s report, TJSV is a producer of identical or comparable merchandise, and its financial statements are undistorted by subsidies.

**Department’s Position:** The Department agrees with Petitioner in part. We find the financial statements of Ganges and Suzlon are not the best available information to value surrogate financial ratios. However, we find that TJSV’s FY ending March 31, 2013 financial statements meet the Department’s criteria for the best available information for the reasons explained below.\(^{124}\)

**Ganges**

In the *Preliminary Results*, the Department selected Ganges’ FY ending March 31, 2014 audited financial statements as the best available information to calculate surrogate financial ratios. We also noted that the record contains Ganges’ FY ending March 31, 2013 and FY ending March 31, 2011 financial statements. However, we explained in the *Preliminary Results* that because the FY ending March 31, 2013 financial statements cover 1.5 months of the POR, while the FY ending March 31, 2014 audited financial statements cover eleven months of the POR, and the

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\(^{124}\) See Final Analysis Memorandum.
Ganges FY ending March 31, 2011 financial statements are not contemporaneous with the POR, we disregarded the FY ending March 31, 2013 and FY ending March 31, 2011 financial statements.

In its case brief, Petitioner argues that, consistent with *Floor Standing, Metal Top Ironing Tables from China* 125 and *Yantai Xinke*, 126 the Department should reject Ganges’s FY ending March 31, 2014 and FY ending March 31, 2013 financial statements because the P&L statements are not publicly available. Petitioner claims it hired a foreign market researcher to obtain Ganges’ financial statements. While the foreign market researcher was able to obtain Ganges’ FY ending March 31, 2013 and FY ending March 31, 2014 financial statements, it was unable to obtain the P&L information for both fiscal years. Given these unsuccessful steps, Petitioner states the foreign market researcher was forced to conclude that the P&L information for the past two years did not come from a publicly available source.

In selecting surrogate financial statements, the Department is guided by a general regulatory preference for publicly available non-proprietary information. 127 The Department’s regulatory preference for publicly available information stems from its “concern that a lack of transparency about the source of the data could lead to proposed data sources that lack integrity or reliability.” 128 In selecting financial statements, the CIT has held that “if there is no quantitative or qualitative difference between the two statements, and one is completely publicly available and the other is not (missing a profit and loss statement), then the {Department’s} choice of a complete, publicly available financial statement consistent with its regulatory preference is in the {CIT’s} view, not only reasonable, but correct.” 129

For the final results, we continue to disregard Ganges’ FY ending March 31, 2011 financial statements because they are not contemporaneous with POR. Additionally, we find that Ganges’ FY ending March 31, 2014 and FY ending March 31, 2013 financial statements are not the best available information for the final results because we cannot make a determination as to whether Ganges’ FY ending March 31, 2014 and FY ending March 31, 2013 are publicly available. Petitioner has alleged that Ganges’ FY ending March 31, 2014 and FY ending March 31, 2013 profit and loss statements are not publicly available, and we do not have complete information as to how CSWG was able to obtain these statements. Based on the lack of information on the record, we cannot make a determination as to whether Ganges’ FY ending March 31, 2014 and FY ending March 31, 2013 financial statements are publicly available. Because the record contains suitable alternative financial statements that meet our regulatory preference for publicly available information, we are relying on TJSV’s FY ending March 31, 2013 financial statements.

125 See *Floor-Standing Metal -Top Ironing Tables from China* at Comment 1.
126 See *Yantai Xinke*.
127 See *Since Hardware II*, 977 F. Supp. 2d at 1351.
128 See *Since Hardware*, 911 F. Supp. 2d at 1367.
129 See *Home Products Int’l*, 556 F. Supp. 2d. at 1343.
We have not relied on Suzlon’s FY ending March 31, 2012, FY ending March 31, 2011, and FY ending in March 31, 2010 financial statements because these financial statements are not contemporaneous with the POR and contain evidence of countervailable subsidies. Specifically, footnote 13 accompanying Suzlon’s FY ending in March 31, 2012 financial statements, footnote (2)(i) “Fiscal Incentives” accompanying Suzlon’s FY ending in March 31, 2011 financial statements, and footnote (2)(i) “Fiscal Incentives” accompanying Suzlon’s FY ending in March 31, 2010 financial statements identify account receivables related to the EPCG scheme, a program that the Department has previously found to be countervailable. Therefore, we find that Suzlon’s financial statements are not the best available information and continue to rely on more suitable alternative financial statements (i.e., TJSV FY ending in March 31, 2013 financial statements) that do not have evidence of subsidies and are contemporaneous with the POR.

TJSV

In the Preliminary Results, the Department rejected TJSV FY ending March 31, 2013 financial statements because they did not appear to include a valid auditor’s report. In its case brief, CSWG demonstrated that, contrary to the Department findings in the Preliminary Results, TJSV’s financial statements show the name of the auditor, the name of the auditor firm, the credentials of the auditor as well as the auditing firm (e.g., member number of auditor, the firm registration number, and the permanent account number of the auditor/auditing firm). Moreover, TJSV’s financial statements show that the auditor’s report and balance sheet were signed by the auditor on March 7, 2013. We find that such evidence is sufficient to constitute a valid auditor’s report. Therefore, for the final results, the Department has used TJSV’s FY ending March 31, 2013 audited financial statements to calculate the surrogate financial ratios because TJSV is a producer of comparable merchandise, the company’s publicly available financial statements are audited, complete, contemporaneous, show a profit, and reflect no evidence of subsidies found by the Department to be countervailable.

Petitioner argues TJSV’s FY ending March 31, 2013 financial statements are not reliable because they are not signed. Petitioner argues that while CSWG claims that “the signature of the auditor is not seen here presumably because the report may have been digitally signed,” there is no evidence that TJSV’s FY ending March 31, 2013 financial statements were electronically signed. We disagree with Petitioner’s claim that TJSV’s financial statements are not reliable because they lack an auditor’s signature. TJSV’s FY ending in March 31, 2013 financial statements are an electronic copy and the Department has previously accepted electronic copies of financial statements that lack an auditor’s signature and official stamps. Accordingly, we find TJSV’s audited financial statements reliable and complete.

Petitioner also argues that record evidence does not demonstrate that TJSV is a producer of identical merchandise because nowhere in TJSV’s FY ending March 31, 2013 financial statements...
Petitioner argues the website printouts lists “windmill structures” under the heading “Applications;” however, the photographs included on the webpage appear to indicate that the “towers” referenced are angular or lattice towers, not utility scale wind towers. \[137\] We agree with Petitioner that record evidence does not demonstrate that CSWG produces identical merchandise (i.e., utility scale wind towers) because TJSV’s financial statements do not specify the types of products TJSV produced from April 1, 2012 - March 31, 2013, and TJSV’s website and a company profile of the company do not explicitly indicate that it produces utility scale wind towers. Nonetheless, we find that TJSV produces comparable merchandise because the company’s website and company profile explicitly state that TJSV produces wind mill towers and wind mill structures. \[138\] Additionally, as Petitioner indicates, the photographs included on the webpage appear to indicate that the towers are angular and lattice towers. \[139\] The Department determines that TJSV’s lattice towers are comparable to CSWG’s utility scale wind-towers because TJSV’s lattice towers have similar end-uses, physical characteristics, and production processes. First, we find the end use to be similar because the purpose of a utility scale wind tower and a lattice tower is to support a wind turbine. Next, we find that TJSV’s lattice towers are similar to utility scale wind towers in terms of physical characteristics because both structures are vertical steel structures. \[140\] Finally, we find that TJSV’s production process is similar to CSWG’s production process because they both involve cutting, bending, rolling, welding, and assembling steel structures. \[141\]

Petitioner also contends that TJSV’s FY ending March 31, 2013 financial statements are distorted by countervailable subsidies because a chart submitted by Petitioner purports to show the names of companies that benefitted from a “capital subsidy” scheme in 2013-2014 lists TJSV as a recipient. According to Petitioner, the Department has previously determined that the “capital subsidy” scheme constitutes a countervailable subsidy. \[142\] Petitioner claims the receipt of a subsidy under this scheme undoubtedly distorts TJSV’s FY ending March 31, 2013 financial statements. \[143\] We disagree with Petitioner that TJSV’s financial statements are distorted by countervailable subsidies.

We find that Petitioner chart’s purporting to show the names of companies that benefitted from the “capital subsidy” scheme is unreliable, because it is unclear if the chart is publicly available or authentic since there is no evidence that the source of the information is from the Government of India. For instance, Petitioner specifies in its own cover letter that the source of the chart is from the Government of India, but does not provide a cover letter from the Government of India to support its claim. Moreover, the chart is not printed on any Government of India letterhead or any other documentation that identifies the government authority which would enable the Department to determine if it is an authentic and credible source. Without the letterhead or any additional information regarding the source of the chart, we cannot make a determination regarding the reliability of the chart. In addition, the chart appears incomplete because the

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136 See Petitioner Rebuttal Brief at 16.
137 Id. at 17-18.
138 See CSWG February 2, 2015 submission at Exhibit 15F.
139 See Petitioner Rebuttal Brief at 17-18.
140 See Wind Towers from Vietnam at Comment 2.
141 See CSWG February 2, 2015 submission at Exhibit 15F.
142 See PET Film from India, 71 FR 7536.
143 See Petitioner Rebuttal Brief at 18-19.
column entitled “Incentive benefitted from Govt. (Rs.)” is cut-off and does not specify the unit of measurement (e.g., hundreds, thousands, etc.).

In contrast to Petitioner’s chart, we find TJSV’s FY ending in March 31, 2013 financial statements to be a more reliable source in determining whether TJSV received countervailable subsidies. TJSV’s audited financial statements are accompanied by an auditor’s assurance as to conformity with generally accepted accounting principles. The statements indicate that TJSV did not receive any countervailable subsidies in the FY ending in March 31, 2013. Accordingly, we find that Petitioner’s chart is unreliable and determine that there is no evidence supporting Petitioner’s claim that TJSV’s FY ending in March 31, 2013 financial statements reflect any evidence of countervailable subsidies.

Finally, we disagree with Petitioner’s claim that TJSV’s financial statements are not contemporaneous with the POR.144 The Department considers a source to be contemporaneous regardless of the number of months of overlap with the POR.145 Because TJSV’s FY ending March 31, 2013 financial statements overlaps with one-half month of the POR, we find the source to be contemporaneous. Accordingly, we find that TJSV’s FY ending March 31, 2013 financial statements are the best available financial statements to calculate surrogate financial ratios because TJSV is a producer of comparable merchandise, the company’s publicly available financial statements are audited, complete, contemporaneous, show a profit, and reflect no evidence of subsidies found by the Department to be countervailable.

Comment 5: Flanges

The HTS description for HTS 7308.90.90 is for “Structures (Excluding Prefabricated Buildings of Heading 9406) and Parts of Structures (For Example, Bridges and Bridge-Sections, Lock-Gates, Towers, Lattice Masts, Roofs, Roofing Frameworks, Doors and Windows and Their Frames and Thresholds for Doors, Shutters, Balustrades, Pillars and Columns), of Iron or Steel; Plates, Rods, Angles, Shapes, Sections, Tube and the Like, Prepared for Use in Structures of Iron or Steel.”

The HTS description for 7307.91.90 is for “Tube or Pipe Fittings (For Example, Couplings, Elbows, Sleeves), or Iron or Steel: Flanges: Other.”

- Indian HTS subheading 7307.91.90 is the best available information because it is the most product-specific surrogate value (i.e., the description in this Indian HTS subheading is specific to steel flanges).
- Indian HTS subheading 7308.90.90 is not the most specific HTS subheading because it is a basket category that is not specific to any particular structure or part thereof. Moreover, Petitioner alleges a review of the statistical classifications of subheading 7308.90 indicates that HTS subheading 7308.90.90 is a catch-all provision that almost any steel item, regardless of form use, size, or composition, that is not otherwise identifiable elsewhere in subheading 7308.90 would be classifiable under this subheading.
- Indian HTS subheading 7307.91.90 is the best available information because CSWG and Indian importers entered their imports under this subheading.

144 Id. at 19.
145 See MLWF from China.
• Although CSWG claims that Infodrive India data that it placed on the record evidence “several entries of wind tower flanges” under Indian HTS subheading 7308.90.90, and that entries classified under HTS subheading 7307.91.90 are “occasional misclassifications,” the vast majority of imported flanges entered India under HTS subheading 7307.91.90.
• While CSWG attempts to hide behind a U.S. Customs ruling, a U.S. Customs ruling is not probative of the Indian surrogate value that the Department should use to value CSWG’s steel flanges.
• Unlike Steel Wire Garment Hangers from China 2015, where the Department could not see behind the HTS code import data on the record to determine which products within the relevant HTS code were actually imported, here Indian importers and CSWG classified their steel flanges under this HTS number.

**CSWG**

• CSWG steel flanges are properly classifiable under HTS 7308.90.90 because the Department valued steel flanges based on HTS 7308.90.90 in the original investigation and Petitioner did not appeal this valuation.
• Additionally, HTS 7307.91.90 is not the appropriate HTS because it covers flanges that are manufactured for and used specifically as fittings for pipes and tubes.
• HTS 7308 is the appropriate HTS heading because the Explanatory Note to Indian tariff HTS 7308 specifically mentions “towers” as one of the structures covered under this heading.
• HTS 7308.90.90 is the appropriate HTS category because U.S. Customs ruling has held that wind tower flanges are classified under a sub-heading within HTS 7308.90. CSWG claims that, contrary to Petitioner’s assertions, the Department’s policy is to rely on U.S. customs rulings for determining the proper classification under the Indian tariff when the U.S. tariff is harmonized with the corresponding heading in the Indian tariff as in Sodium Hexametaphosphate from China.
• Technical literature including purchasing specifications and photographs of the flanges used by CSWG in the manufacture of wind towers reveal that the flanges used by CSWG are to connect large towers and are designed as part of the tower.
• Heavy Forged Hand Tools from China for the proposition that Petitioner’s argument that HTS 7308.90 is a basket category or catch-all provision is unpersuasive because the HTS subheading unambiguously includes wind tower flanges and, therefore, is the best available information.
• According to the U.S. Customs ruling, wind tower flanges are classified under HTS 7308.90.90 and misclassifications of flanges under HTS 7307.91.90 in CSWG entry documents do not impeach the correct choice of HTS 7308.90.90.
• Infodrive India data show predominant imports of wind towers flanges under HTS 7309.90.90.

**Department Position:** In the *Preliminary Results*, the Department selected HTS 7308.90.90 to value CSWG’s consumption of flanges used to connect wind tower sections because the data satisfied all of the Department’s criteria for selecting a surrogate value and the heading for HTS 7308.90.90 most closely describe this input. For the final results, we have carefully reviewed the briefs and rebuttal briefs regarding flanges and continue to determine that HTS 7308.90.90

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146 See CSWG’s December 16, 2014 submission at 11-14 and Exhibits S-6-3.1-S-6-3.3 and Exhibits S-6-1.3-S-6-1.4.
most closely describes CSWG’s flanges based on a plain reading of the two HTS descriptions under consideration. Specifically, the heading for HTS 7308 specifies:

“Structures (Excluding Prefabricated Buildings of Heading 9406) and Parts of Structures (For Example, Bridges and Bridge-Sections, Lock-Gates, Towers, Lattice Masts, Roofs, Roofing Frameworks, Doors and Windows and Their Frames and Thresholds for Doors, Shutters, Balustrades, Pillars and Columns), of Iron or Steel; Plates, Rods, Angles, Shapes, Sections, Tube and the Like, Prepared for Use in Structures of Iron or Steel.”

CSWG’s written description, purchasing specification and photographs of the flanges used by CSWG to manufacture wind towers confirm that the flanges used by CSWG are to connect the large utility scale wind tower sections. The sections are heavy and customized industrial steel components that are an integral and specially designed part of utility scale wind towers, a type of structure expressly included in HTS heading 7308. These technical specification and photographs demonstrate that these clearly are not small mass-produced fittings for pipes and tubes.147

Petitioner argues Indian HTS subheading 7307.91.90 is the best available information because the description in this Indian HTS subheading is specific to steel flanges.148 We disagree with Petitioner’s interpretation of the Indian HTS. The written description for HTS heading 7307 is “Tube or Pipe fittings (for example, couplings, elbows, sleeves), of iron or Steel.” Further, the HTS subheading 7307.91 cover two types of “Flanges”: (1) 7307.91.10 “Galvanized Flanges” and (2) 7307.91.90 “Other Flanges.” Read together, the “flanges” covered under HTS 7307.91.90 are not specific to CSWG’s flanges because this subcategory of flanges is limited to “other flanges” that are manufactured for and used specifically as fittings for pipe or tube. Flanges not designed for pipe or tube fittings, such as CSWG’s flanges, cannot be classified under subheading HTS 7307.91.90 because the subheading falls under HTS heading 7307, which is for tube or pipe fittings.

Petitioner asserts that Indian HTS subheading 7308.90.90 is not the most specific HTS subheading because it is a basket category that is not specific to any particular structure or part thereof. We disagree with Petitioner that Indian HTS subheading 7308.90.90 is not specific to any particular structure or part thereof because the heading to Indian tariff HTS category 7308 explicitly lists “towers.” Further, Explanatory Note to HTS 7308 also contains an example of parts of structures that applies to CSWG’s flanges: “{p}arts of structures include clamps and other devices specifically designed for assembling metal structural elements of round cross-section (tubular or other).”149

Petitioner also argues Indian HTS subheading 7307.91.90 is the best available information because CSWG and Indian importers entered their imports under this subheading.150 Petitioner contends that although CSWG claims that Infodrive India data that it placed on the record show “several entries of wind tower flanges” under Indian HTS subheading 7308.90.90, and that entries classified under HTS subheading 7307.91.90 are “occasional misclassifications,” the vast majority of imported flanges entered India under HTS subheading 7307.91.90.151 Additionally,

147 See CSWG December 16, 2014 submission.
148 See Petitioner Case Brief at 83-84.
149 See CSWG December 16, 2014 submission.
150 See Petitioner Case Brief at 85.
151 Id. at 86-87.
Petitioner argues that, unlike *Steel Wire Garment Hangers from China 2015*, where the Department could not see behind the HTS code import data on the record to determine which products within the relevant HTS code were actually imported, in this proceeding, the Indian importers and CSWG classified their steel flanges under Indian HTS subheading 7307.91.90.\(^{152}\) Further, Petitioner asserts that the U.S. customs ruling is not probative of the Indian surrogate value that the Department should use to value CSWG’s steel flanges.\(^{153}\) We disagree with Petitioner that using Indian HTS subheading 7307.91.90 is the best available information because CSWG and Indian importers enter their imports under this subheading. The record includes a U.S. Customs ruling finding that wind tower flanges are classified under a subheading within HTS 7308.90.\(^{154}\) While not conclusive, we believe that the U.S. Customs ruling is informative because U.S. and Indian tariff codes are harmonized at the six-digit HTS level.\(^{155}\) As such, it is reasonable that the U.S. Customs ruling supports a finding that CSWG and other Indian importers misclassified its flanges under HTS subheading 7307.91.90.

Moreover, Petitioner alleges a review of the statistical classifications of subheading 7308.90 indicates that HTS subheading 7308.90.90 is a catch-all provision that almost any steel item, regardless of form use, size, or composition, that is not otherwise identifiable elsewhere in subheading 7308.90 would be classifiable under this subheading.\(^{156}\) We agree that HTS subheading 7308.90.90 may be a basket category, but based on CSWG’s written description of this input, we find that HTS subheading 7308.90.90 most closely describes this input. Further, data from this HTS category satisfied all of the Department’s criteria for selecting a surrogate value. Accordingly, for the final results, we continue to find that HTS subheading 7308.90.90 is the best available information to value CSWG’s utility scale wind tower flanges.

**Comment 6: Clerical Error in Calculation of Market Economy Prices**

- CSWG notes that the Department’s preliminary margin program contains a clerical error in the calculation of the ME price for aluminum bar because the percentages of the NME and ME prices for aluminum bar does not sum to 100 percent.

- Petitioner did not comment on this issue.

**Department Position:** We agree with CSWG and have corrected the clerical error.\(^{157}\)

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\(^{152}\) *Id.* at 88.

\(^{153}\) *Id.*

\(^{154}\) See CSWG February 12, 2015 submission at 12B-C.

\(^{155}\) *Id.* at 12C-D.

\(^{156}\) See Petitioner Case Brief at 84-85.

\(^{157}\) See Final Analysis Memorandum.
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 margin in the Federal Register.

Agree       Disagree

_________________________  __________________________
Paul Piquado       /   
Assistant Secretary  for Enforcement and Compliance

_________________________
Date  8 September 2015
## Appendix

### I. Acronym and Abbreviation Table

<table>
<thead>
<tr>
<th>Acronym/Abbreviation</th>
<th>Full Names</th>
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<tr>
<td>The Act</td>
<td>Tariff Act of 1930</td>
</tr>
<tr>
<td>ADD</td>
<td>Antidumping duty</td>
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<tr>
<td>ASTM</td>
<td>American Society for Testing and Materials</td>
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<td>AUVs</td>
<td>Average Unit Value</td>
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<td>CIT</td>
<td>Court of International Trade</td>
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<td>CSWG</td>
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<td>CVD</td>
<td>Countervailable Duty</td>
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<td>Department</td>
<td>Department of Commerce</td>
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<td>DEPB</td>
<td>Duty Entitlement Passbook</td>
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<td>Elecon</td>
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<td>Export Promotion Capital Goods</td>
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<td>POP</td>
<td>Factors of Production</td>
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<td>Global Trade Atlas</td>
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<td>HSLA</td>
<td>High-strength low alloy</td>
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<td>Harmonized Tariff Schedule</td>
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<td>Issues and Decision Memorandum</td>
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<td>ISGEC</td>
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<td>Kg.</td>
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<td>ME</td>
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II. Table of Shortened Citations

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<td><strong>Utility Scale Wind Towers From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 12449 (March 9, 2015) and accompanying Preliminary Decision Memorandum</strong></td>
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<td><strong>Refrigerator-Freezer from Korea</strong></td>
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### VI. Other Documents

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