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DATE: August 11, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China

SUMMARY

The Department of Commerce (Department) has analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced review. As a result of our analysis, we have made changes in the margin calculation for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On February 5, 2010, the Department published in the Federal Register the Preliminary Results of the administrative review of the antidumping duty order[1] on wooden bedroom furniture from the People's Republic of China (PRC).[2] We invited parties to comment on our Preliminary Results. On March 23, 2010, a group of separate rate respondents consisting of Great Rich (HK) Enterprises Co., Limited, Coronal Enterprises Co., Ltd., Dongguan Wanhengtong Industry Co., Ltd., Season Furniture Manufacturing Co., Ltd., and Season Industrial Development Co., Ltd. submitted comments in lieu of a formal case brief. Petitioners,[3] a coalition representing importers and a separate rate company (the Coalition),[4] and Fairmont,[5] the mandatory respondent

[1] See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China, 70 FR 329 (January 4, 2005).
[2] See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part, 75 FR 5952 (February 5, 2010) (Preliminary Results).
[3] Petitioners are comprised of the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc.
[4] The Coalition is comprised of Coaster Company of American, Emerald Home Furnishings, LLC, Trade Masters of Texas, Inc. and Star International Furniture, Inc., importers of the subject merchandise, and COE Ltd, a separate rate respondent (the Coalition).
[5] Fairmont is comprised of Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd. (TCSR), Taicang Fairmount Designs Furniture Co., Ltd.; and Meizhou Sunrise Furniture Co., Ltd.

in this administrative review, submitted case briefs on April 9, 2010.[6] Petitioners and Fairmont submitted rebuttal briefs on April 20, 2010.[7] On April 28, 2010, the Department issued the Nanmu No Shipments Memo addressing Nanjing Nanmu's claim of no shipments.[8] On May 5, 2010, Petitioners submitted their case brief concerning Nanjing Nanmu. On May 10, 2010, Nanjing Nanmu submitted a rebuttal brief. On July 14, 2010, the Department issued the Wage Rate Notification. Interested parties submitted case and rebuttal briefs on July 19, 2010, and July 22, 2010, respectively.

Below is the complete list of the issues in this administrative review for which we received comments.[9]

LIST OF THE ISSUES

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[6] Fairmont's resubmitted its case brief on April 13, 2010 to correct for the treatment of BPI contained therein.
[7] The Department determined that Fairmont's rebuttal brief contained untimely filed new information (See the Department's April 21, 2010 letter to Fairmont regarding Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: New Factual Information Contained in Fairmont Designs' April 20, 2010, Rebuttal Brief), which Fairmont removed from its rebuttal brief and resubmitted on April 30, 2010.
[8] See Nanmu No Shipments Memo.
[9] A table listing all acronyms and abbreviations is attached at the end of this memorandum.

Comment 25: Glass
Comment 26: Freight Revenue
Comment 27: Calculation of the Indirect Selling Ratio
Comment 28: Unit of Measure for HTS Subheading 4421.90.99
Comment 29: Inventory Carrying Costs for Direct Shipments
Comment 30: Financial Ratios
Comment 31: Unreported Sales
Comment 32: Credit Expenses and Inventory Carrying Costs
Comment 33: Nanjing Nanmu
Comment 34: Labor

Comment 1: Electricity

In the Preliminary Results, we valued electricity using Philippine data from Camarines Sur which are available at the province's website at http://www.camarinessur.gov.ph.

- Fairmont argues that the Department should value electricity using data from the Central Electricity Authority of the Government of India for industrial consumption. Fairmont argues that these rates represent a more appropriate SV, because, unlike the Camarines Sur data, they represent national prices for which the Department has stated its preference over localized or individual prices.[10]
- Fairmont argues that the data from Camarines Sur are aberrational because the prices listed on the website are significantly higher (e.g., twice as high) than the prices of Thailand and Indonesia, and that the Camarines Sur data are distorted by taxes and government subsidies.[11]
- Fairmont further argues that the electricity rates from the Camarines Sur data are derived from two cities in Camarines Sur, Naga and Iriga, which do not have furniture factories.[12]
- Petitioners argue that the Department properly valued electricity using data from Camarines Sur in the Preliminary Results.
- Petitioners note that the article Fairmont used in support of its argument, that the data from Camarines Sur are aberrational because the prices listed on the website are significantly higher than the prices of India, Thailand, and Indonesia, states, "the reason for the Philippines' comparatively higher rates is a mix of market and non-market factors, partially because other ASEAN countries have more competitive power markets, and partially because their respective governments subsidize electricity prices where Manila does not."[13] Petitioners further note that the Department has previously concluded that

[10] See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010) and accompanying Issues and Decisions Memorandum, at Comment 1.
[11] See Fairmont's December 10, 2009 submission at Exhibit 6, page 59.
[12] See Fairmont's March 15, 2010 submission at Exhibit 16.
[13] See Fairmont's December 10, 2009 submission at Exhibit 6, page 59.

India and Thailand offer subsidies related to electricity,[14] resulting in distorted market prices.

- Petitioners also argue that in making the argument that electricity rates from the Camarines Sur data are "distorted by taxes and government subsidies" Fairmont incorrectly applies the article to the Camarines Sur data. Petitioners note that the article identifies Manila Electric Company (Meralco) as the Philippine electrical company whose rates include taxes and subsidies not Camarines Sur.[15]
- Petitioners also argue that Fairmont's claim that Naga and Iriga do not make furniture is unsubstantiated and that country-wide data from the Philippines corroborates the Camarines Sur data.
- Petitioners contend that country-wide electricity information corroborates the Camarines Sur province information used by the Department. Specifically, Petitioners note that the Philippine national industrial rates reported by the HAPUA were $0.1735 per kWh compared to the $0.1778 per kWh industrial rates reported by the cities within the Camarines Sur province.[16]
- Petitioners contend that country-wide electricity information corroborates the Camarines Sur province information used by the Department. Specifically, Petitioners note that the Philippine national industrial rates reported by HAPUA were $0.1735 per kWh compared to the $0.1778 per kWh industrial rates reported by the cities within Camarines Sur province.[17]

Department's Position:

The Department disagrees with Fairmont and will continue to value electricity consumption based on electricity data from Camarines Sur. These data are contemporaneous with the POR, publicly available, and pertain only to industrial consumption.[18] In addition, the Department has previously determined that Camarines Sur is a reliable source as we have previously relied upon such data in the final results of the third administrative review of this proceeding.[19]

Fairmont has compiled a list of electricity rates from several Asian countries, which identifies the Philippines as having one of the highest electricity rates in Asia.[20] However, the Department

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[14] See Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India, 68 FR 68356 (December 8, 2003), and accompanying Issues and Decision Memorandum at Comments 5-6. See also Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders, 71 FR 70960 (December 7, 2006), and accompanying Issues and Decision Memorandum at Comment 13.
[15] See Fairmont's December 10, 2009 submission at Exhibit 6.
[16] See Petitioners' Pre-Preliminary Comments (December 10, 2009) at 27.
[17] See Petitioners' Pre-Preliminary Comments (December 10, 2009) at 27.
[18] See Petitioners' July 20, 2009 SV submission at Exhibit 7.
[19] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 10.
[20] See Fairmont's Case Brief, Volume II, at Exhibit 9.

has previously stated that the existence of higher prices alone does not necessarily indicate that price data are distorted or misrepresentative. Thus, the existence of a high price is not sufficient to exclude a particular SV, absent specific evidence that the value is otherwise abnormal or unreliable.[21] This test compares the prices of what is purported to be aberrational with SVs from other potential surrogate countries. While the electricity rates of the Philippines are twice as high as the SVs from India, Thailand, and Indonesia, all of which we identified to be potential surrogate countries at the beginning of this review, we also note that the electricity rates of the Philippines are not outliers among the spectrum of Asian electricity rates identified by Fairmont. Rather, Cambodia has the highest electricity rates in Asia and those of Singapore are relatively similar to those of Cambodia and the Philippines. Thus, based on the country wide electricity rates on the record, we do not find those of the Philippines to be aberrational.[22]

Fairmont quoted an anonymous Philippine government Department of Energy official stating that the Philippines electricity rates were comparatively higher than other ASEAN countries due to a less competitive electricity market in the Philippines and also because the Philippines, unlike other countries, does not provide electricity subsidies.[23] However, because the source of this quote requested to be anonymous, we are unable to confirm the validity of his statement that the electricity market in the Philippines is relatively uncompetitive. Further, the fact that the Philippines does not provide electricity subsidies is a reason in favor of using Philippine electricity rates as an SV[24]

We also find that Fairmont's argument that electricity rates from the Camarines Sur are "distorted by taxes and government subsidies" is not applicable here as the article that is the basis of this claim discusses Meralco as the Philippine electrical company whose rates include taxes and subsidies[25] and Meralco is not located in Camarines Sur.[26] We also note that the costs of Camarines Sur electricity is closely in line with the other sources of electricity on the record for Philippines electricity providers to end users,[27] and national rates as calculated by HAPUA.[28]

With regard to Fairmont's argument that the Camarines Sur data are based on cities lacking furniture production, the article Fairmont cites to as evidence only states that most furniture in

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[21] See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1.
[22] See Fairmont's Case Brief, Volume II, at Exhibit 9.
[23] See Fairmont's December 10, 2009 submission at Exhibit 6, page 59.
[24] The U.S. Congress has stated that the Department should "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).
[25] See Fairmont's December 10, 2009 submission at Exhibit 6.
[26] Meralco is an electricity provider to Manila. See Fairmont's December 10, 2009 submission at Exhibit 6.
[27] See Fairmont's December 10, 2009 submission at Exhibit 5. We have disregarded the Meralco blended industrial rate and the National Power Corporation rate as they are both based on the electricity rates electricity providers are charged, rather than prices charged to end users. See Fairmont's July 20, 2009 submission at Exhibit 5.
[28] See Petitioners' Pre-Preliminary Comments (December 10, 2009) at 27.

the Philippines is made in Manila, Cebu, and Papanga.[29] Thus, furniture may be also manufactured in Camarines Sur. Moreover, the Indian electricity rates argued for by Fairmont do not specify whether furniture factories were located in the area from which the data were derived. Additionally, no party has placed on the record electricity SVs specific to the furniture industry. We further note that electricity data from Camarines Sur is specific to industrial electricity consumption.[30]

With regard to the Central Electricity Authority of the Government of India electricity prices argued for by Fairmont, the Department notes that these rates do represent nation-wide prices, however, they are from July 2006, while the Camarines Sur data are contemporaneous with the POR. We also note that Fairmont stated that the Philippines, not India, should be selected as the surrogate country.[31] The Department has a precedent of not using data from an alternative surrogate country when reliable data from the primary surrogate country, in this case the Philippines, are available.[32] For these reasons, the Department will continue to value electricity using data from Camarines Sur.

Comment 2: Water

In the Preliminary Results, we calculated the SV for water using Philippine data from two water utility companies providing service to the Manila metropolitan area and also data from the Philippines Local Water Utilities Administration (LWUA), a water utility company covering all of the Philippines outside of Manila. We averaged all data from the Manila service providers and the outside of Manila service providers, separately, and based the SV on an average of the two figures.[33]

- Fairmont argues that for the final results the Department should use the most recent Indian water rates charged by the Maharashtra Industrial Development Corporation of India, which represents a nation-wide water value, to value Fairmont's water input.[34]
- Fairmont argues that the approach taken by the Department is not appropriate as this methodology results in an unrepresentative and aberrational value. Fairmont argues that the simple average methodology used by the Department inappropriately skews the value in favor of the large metropolitan area of Manila, where people have greater access to water at higher prices.

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[29] See Fairmont's March 29, 2010 submission at Exhibit 16.
[30] See Petitioners' July 20, 2009 submission at Exhibit 7.
[31] See July 20, 2009 Letter from Fairmont regarding, "Wooden Bedroom Furniture From the People's Republic of China, A-570-890: Comments on Surrogate Country Selection," (Fairmont's Surrogate Country Comments).
[32] See 19 CFR 351.408(c)(2); Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comments 5A and 5D ; See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 2.
[33] See Preliminary Results.
[34] See Fairmont's December 10, 2009 submission at 5-6; See Fairmont's December 24, 2009 submission at 10.

- Fairmont also argues that it is unclear whether the LWUA data represents industrial or commercial consumers, which further calls into question the relevance and representativeness of these data.
- Fairmont further argues that the methodology used in the Preliminary Results does not represent a nationwide value as the LWUA value used to represent the area outside of Manila does not cover all water districts.[35]
- Fairmont also argues that the water SV used in the Preliminary Results is aberrational because it is nearly double the prices from the state of Maharashtra, which has been used by the Department as a water SV in other proceedings.[36]
- Petitioners argue that the Department properly valued Fairmont's water inputs in the Preliminary Results.
- Petitioners argue that it is not persuasive to say that one of two rates must be aberrational just because Fairmont says so, particularly when inflators and deflators have to be applied to the non-contemporaneous provincial data from India in order to calculate the rate argued for by Fairmont.[37]

Department's Position:

For the final results, the Department will continue to value Fairmont's water consumption using an SV from the same three sources and the same simple average methodology that was used in the Preliminary Results.

The data used in the Preliminary Results are in line with the Department's preference of using data that are representative of period-wide price averages, prices that are net of taxes and import duties, publicly available, and from a single ME country.[38] The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are representative of a broad market average, and publicly available. Among the data on the record, the data used in the Preliminary Results represents a broad market average, as this methodology utilizes data from the largest population center in the Philippines (Manila), as well as source data from the Philippines that cover areas outside of the Manila metropolitan area. Despite now arguing against it, the Department notes that it was Fairmont who placed the LWUA data on the record, stating at the time "The LWUA Databank provides an average of all of the regional water rates in the Philippines."[39] The Department further notes that Fairmont would like to replace the Philippine data from the Preliminary Results with data that only cover the state of Maharashtra in India. Thus, the Philippine data from LWUA and the two Manila service providers are far more

[35] See Fairmont's December 24, 2009 submission at 10, note 34.
[36] See Fairmont's December 10, 2009 submission at Exhibit 7.
[37] See Fairmont's December 10, 2009 submission at Exhibit 7, pages 71 and 84.
[38] See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66087 (December 14, 2009), and accompanying Issues and Decision Memorandum at Comment 1.
[39] See Fairmont's July 20, 2009 submission at 6.

representative of countrywide prices than the alternative data from the state of Maharashtra in India proposed by Fairmont.

Fairmont argues that the Department's methodology for calculating a Philippine SV for water "inappropriately skews the value in favor of the large metropolitan area of Manila, where people have greater access to water at higher prices."[40] Fairmont has not supported this argument with any record evidence. Furthermore, the record does not demonstrate the amount, if any, that the water consumption of the Manila service providers exceeds that of the LWUA.[41] Fairmont also cites to a case it claims demonstrates that the Department's typical practice is to use a weighted-average national price for SVs.[42] Fairmont's citation to Lock Washers is inapposite. In that case, the Department calculated an overall weighted-average wire rod value by weighting the average multiple wire rod prices for different dimensions of wire rod by the respondent's consumption of these dimensions.[43] Thus, the value was weighted based on the dimensions of the input the respondent consumed, not based on the individual price for each of these dimensions. Here, Fairmont has not reported that it consumed different kinds of water. Thus, there would be no basis to weight-average the price of water by the different kinds of water Fairmont consumed. In any event, the Department notes that the record does not contain consumption amounts or other figures that would allow the weight-averaging of the Philippine price of water. Fairmont also argues that it is unclear whether the LWUA data represent industrial or commercial consumers. While this aspect of the LWUA data may be unclear, the Department finds this data used in the Preliminary Results (which includes the LWUA data), as opposed to the data Fairmont argues for, are the best available information because they are publicly available, contemporaneous with the POR, are net of taxes, are far closer to representing a national price than Fairmont's data, and are from the primary surrogate country. As stated above, the Department's practice is to not use data from an alternative surrogate country when reliable data from the primary surrogate country are available.[44]

Fairmont also argues that the water value used in the Preliminary Results is aberrational as it is nearly double the value of pricing data from the state of Maharashtra, which have been used by

[40] See Fairmont's Case Brief, Volume II, at 35.
[41] See Fairmont's July 20, 2009 submission at Exhibit 7 and Petitioners' July 20, 2009 submission at Exhibit 6.
[42] See Fairmont's Case Brief, Volume II, at 35 citing to: "Preliminary Results of the 2007-2008 Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China, at 7 (November 2, 2009)." The Department notes that this citation does not include a Federal Register citation but presumes Fairmont is citing to 74 FR 57653 (November 9, 2009). Accordingly, it is unclear exactly to which page of the Federal Register notice Fairmont cites. As best as could be ascertained, Fairmont appears to be referencing the Department's weight-averaging of the overall SV for wire rod.
[43] See Certain Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 57653, 57657 (November 9, 2009).
[44] See 19 CFR 351.408(c)(2); Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comments 5A and 5D; See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329, and accompanying Issues and Decision Memorandum at Comment 2.

the Department as an SV for water in other proceedings.[45] The Department has previously stated that the existence of a higher price is not sufficient to exclude a particular SV, absent specific evidence that the value is otherwise abnormal or unreliable.[46] In this case, the record does not contain any such evidence regarding the Philippine data.

Comment 3: Miscellaneous Veneer

In the Preliminary Results, the Department valued Fairmont's miscellaneous veneer based on Philippine imports under HTS subheading 4408.39.90 ("{S}heets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm . . . Of tropical woods specified in Subheading Note 1 to this Chapter - Other . . . Other").[47]

- Petitioners argue that this HTS classification was at least partially incorrect for valuing TCSR's miscellaneous veneer, which the Department determined at verification partially consisted of lauan wood.[48] Petitioners claim that lauan is another name for dark red meranti,[49] and that meranti is explicitly included in HTS subheading 4408.31; thus the SV for TCSR's consumption of miscellaneous veneer should be based on either HTS subheading 4408.31[50] or HTS subheadings 4408.31 and 4408.39.90.[51]
- Fairmont did not comment on this issue.

Department's Position:

At verification, Fairmont officials stated that all of TCSR's miscellaneous veneer consists of okoume or lauan veneers.[52] However, Fairmont did not provide separate consumption figures for these miscellaneous veneers. Petitioners have provided evidence that lauan is another name for meranti and that meranti veneer is classified under HTS subheading 4408.31. We note, however, that white lauan is included in Philippines' HTS subheading 4408.39.90. Because we are unable to segregate the consumption of okoume and lauan, and record evidence indicates that meranti/lauan wood could be classified under either HTS subheading 4408.39.90 or 4408.31, the

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[45] See Fairmont's December 10, 2009 submission at Exhibit 7.
[46] See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1B.
[47] See Petitioners' July 20, 2009 submission at Exhibit 3. Unless otherwise noted, all descriptions of Philippine tariff classifications come from this submission.
[48] See the December 30, 2009 Verification Report of Taicang Sunrise Wood at 37.
[49] See Petitioners' August 21, 2009 submission at Exhibit 1.
[50] Petitioners' July 20, 2009 submission at Exhibit 3 lists HTS subheading 4408.31 as including "dark red meranti, light red meranti and meranti bakau."
[51] Petitioners did not explicitly state a preference of whether the Department should use one or both subheadings in valuing TCSR's consumption of miscellaneous veneer.
[52] See the December 30, 2009 Verification Report of Taicang Sunrise Wood at 37.

Department has valued TCSR's miscellaneous veneer for the final results using an average of HTS subheadings 4408.39.90 and 4408.31.

Comment 4: Plywood

Fairmont stated that it used plywood of non-coniferous wood of a thickness of less than 6 mm,[53] which corresponds to HTS subheading 4412.14. However, because there were no Philippine imports of this category in 2008, in the Preliminary Results, we valued plywood under HTS subheading 4412.29 (plywood with a ply of non-coniferous wood of a thickness of greater than 6 mm).

- Fairmont argues that HTS subheading 4412.29 is inappropriate for valuing its plain plywood inputs because HTS subheading 4412.29 includes imports other than plain plywood, noting that the description of HTS subheading 4412.29 includes "{p}lywood panels faced with metal, artificial plastic, or other materials").
- Fairmont argues that the Department should use price data from the Philippine Wood Producers Association (PWPA) as these prices are itemized by thickness, and thus better represent Fairmont's inputs. Fairmont argues that the PWPA survey is contemporaneous with the POR and allows for the calculation of an SV net of taxes and import duties. Fairmont argues that the PWPA survey also provides prices for different grades of plywood and that ordinary- or indoor-grade plywood is the type used by Fairmont in the production of wooden bedroom furniture. Fairmont further argues that virtually all of the Philippines' plywood consumption is satisfied by domestically produced plywood. Fairmont notes that the Department has stated a preference for using domestic prices over import prices[54] if they are publicly available and reflect numerous transactions between buyers and sellers, which it argues is the case with the PWPA survey data.[55] While Fairmont acknowledges that the PWPA survey only represents prices in the National Capital Region of the Philippines, it argues that this does not diminish the significance of the aforementioned point as this region is the most populous area of the Philippines, representing about 13 percent of the nation's total population and is one of three areas where a majority of the furniture in the Philippines is produced and consequently plywood for furniture production is consumed.[56]

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[53] See Fairmont's August 18, 2009 supplemental response, at its answer to question 61.

[54] See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61966 (November 20, 1997)("Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors."); see also Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19030 (April 30, 1996).

[55] See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum, at Comment 11 ("Generally, it is the Department's preference to use a publicly available price that reflects numerous transactions between many buyers and sellers.").

[56] See Resubmission of Fairmont's Rebuttal to Petitioners' Post-Preliminary Results Submission of Surrogate Financial Statement Information of March 15, 2010, at Exhibit 16 (p. 564) (March 29, 2010) (noting that the bulk of

- Petitioners oppose using the PWPA survey to value Fairmont's plywood. Petitioners claim that there is no information on the record explaining whether the PWPA "prices" represent transaction prices, negotiated prices, price quotes, prices established outside of the normal course of business, or how many prices the data represent. Petitioners claim that the record contains no information of how many companies in this small region provided information for the survey, or which Philippine plywood producers and/or retailers were surveyed. Petitioners further argue that the record further contains no information about how the PWPA survey was conducted. Petitioners also note that there also is no evidence that the prices reported in the PWPA survey are domestic prices and not import prices.
- Petitioners believe the Philippine National Statistics Office (NSO) data are reliable and should continue to serve as the source from which the Department values Fairmont's plywood. Petitioners argue that the Department could choose from any of the following options to value Fairmont's plywood: (1) continue to use 2008 NSO import data for subheading 4412.29 (plywood with a ply of non-coniferous wood of a thickness of greater than 6 mm); (2) use 2008 NSO import data for item number 4412.13.10 (at least one outer ply of tropical wood…plain); or (3) inflate the available 2007 NSO import data for subheading 4412.14 (plywood of less than 6mm in thickness with a ply of non-coniferous wood).
- Fairmont argues that the Department should not consider using 2007 import data for HTS subheading 4412.14 because this category is too broad as it contains two sub-categories, one being plain plywood (HTS subheading 4412.14.10) and the other a category labeled "other" (HTS subheading 4412.14.90), and that there were no Philippine imports of HTS subheading 4412.14.10 i.e., plain plywood in 2008, 2007, or 2006. Fairmont asserts that it only used plain plywood corresponding to HTS subheading 4412.14.10 in the manufacturing of furniture.

Department's Position:

With regard to the PWPA survey, the record lacks information to confirm its reliability and thus we have not considered it in valuing Fairmont's plywood inputs. Fairmont placed screen prints of the PWPA survey on the record without providing the Department with details on how the survey was conducted. For example, there is no information on the record explaining whether the PWPA "prices" represent transaction prices, negotiated prices, price quotes, prices established outside of the normal course of business, or how many prices the data represent. Not only does the survey cover only a small part of the Philippines (i.e., the Manila area), but the record contains no information of how many companies in this small region provided information for the survey, or which Philippine plywood producers and/or retailers were surveyed. Moreover, it is unclear whether the PWPA even compiled the survey or if another entity simply provided unverified data for the PWPA to post on its website.

furniture companies are concentrated in three provinces, namely Metro Manila (i.e., the NCR), Cebu, and Pampanga).

Fairmont has placed on the record 2007 NSO data for HTS subheading 4412.14 that were not on the record at the time of the Preliminary Results.[57] Unlike the PWPA survey, we have much more complete information about the NSO data on the record of this review, including information on how the data is gathered.[58] Further, as we noted in issuing the Preliminary Results, the NSO is the primary statistical agency of the Philippine government and the NSO import statistics are compiled from copies of import documents submitted by importers or their authorized representatives to the Bureau of Customs.[59] As stated above, this HTS subheading 4412.14 covers imports of non-coniferous plywood of a thickness of less than 6 mm, which is the type of plywood used by Fairmont as an input.[60] HTS subheading 4412.29 used by the Department in the Preliminary Results does not reflect imports of plywood of the thickness used by Fairmont (i.e., it is for plywood with a thickness of greater than 6 mm).[61] Thickness is the first consideration when classifying plywoods in the world's HTS,[62] and this has informed our decision not to value Fairmont's plywood using HTS subheading 4412.29. Fairmont has argued that 2007 Philippine NSO data for HTS subheading 4412.14 is an inappropriate surrogate source because it is a basket category that contains two subheadings (one for plain plywood and one for "other", non-plain plywood materials) and Fairmont only used plain plywood. However, we have determined that HTS subheading 4412.14 is the best available information on the record for valuing Fairmont's plain plywood given the deficiencies noted above with respect to prices from the PWPA survey and the fact that this subheading covers the input used by Fairmont in so far as it covers plywood of non-coniferous wood of a thickness of less than 6 mm. Further, Fairmont has explicitly stated that its plywood should be valued using Philippine imports of HTS subheading 4412.14.[63] Therefore, for the final results, we have valued Fairmont's plywood inputs based on Philippine imports of HTS subheading 4412.14.

Comment 5: Curve Panel

In the Preliminary Results, we valued Fairmont's curve panel inputs based on Philippine imports under HTS subheading 4412.29, which as discussed above, is the same HTS subheading we used in the Preliminary Results to value Fairmont's plywood input.

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[57] See Fairmont's March 4, 2010, Submission of SV Information for the final results at Exhibit 1.C.

[58] See Petitioners' Submission Of Publicly Available Information To Value Factors Of Production (July 20, 2009) at Attachment 1-3. See also Discussions in Petitioners' Pre-Preliminary Comments (December 10, 2009), at 9-11; See also Petitioners' Reply to Fairmont's December 24, 2009 Pre-Preliminary Rebuttal Comments (January 4, 2010) at 4-7. See also Petitioners' Comments on Fairmont Design's August 31, 2009 Surrogate Factor Value Submission (September 10, 2009) at Attachments 1 and 2.

[59] See the Preliminary Results SV Memo at 1-2.

[60] See Fairmont's August 11, 2009 supplemental response at Exhibit 156 and Fairmont's August 18, 2009 supplemental response, at its answer to question 61.

[61] Thickness is often the first hierarchy used in categorizing many types of wood. See, e.g., Fairmont's July 2, 2009 submission at Exhibit SE-156-1.

[62] See Petitioners' Submission Of Publicly Available Information To Value Factors Of Production (July 20, 2009) at Attachment 3.

[63] See Fairmont's August 18, 2009 submission, at its answer to question 61 where it stated that "the plywood concerned (Fairmont has reported consuming only one type of plywood) should be classified under 441214."

- Petitioners argue that the HTS subheading used by the Department was incorrect because curve panels are an intermediate input or a furniture part, and therefore at a higher level of processing than plywood.
- Petitioners placed on the record a CBP ruling that considers the proper HTS classification of drawer front panels and furniture mouldings.[64] In this CBP ruling, panels and mouldings that had "no features, such as cutouts, holes, miter cuts, notches, etc. which identify {them to be} a part of furniture", were classified under HTS subheading 4421.90 and those panels and mouldings that did contain features which identify them to be furniture parts were classified under HTS subheading 9403.90. Accordingly, Petitioners argue that curve panels should be classified under HTS subheading 4421.90, which contains other articles of wood. On the other hand, if the Department determines Fairmont's curve panels to have the essential character of finished furniture parts because they have been advanced in condition beyond mere wooden materials and are dedicated to, and commercially fit for, use only as furniture parts, that they should be classified under HTS subheading 9403.90, which contains parts of furniture.
- Fairmont argues that the SV for curve panel should be based on the same data used to derive the SV for plywood.[65]
- Fairmont argues that the CBP ruling referenced by Petitioners concerns the result of moulding solid wood, while curve panels are the result of moulding plywood, not solid wood.

Department's Position:

After reviewing the entire record, we have determined that Fairmont's curve panel inputs should be classified under HTS subheading 9403.90. As described by Fairmont, its curve panels are made from plywood that has undergone value-added processes that shape it into panels used in furniture.[66] In contrast, HTS heading 4412, which is the HTS heading under which Fairmont originally argued its curve panels should be classified, contains plain plywood which is plywood that has undergone no value added processing beyond the processes necessary to construct plywood.

Fairmont has argued that the CBP ruling referenced by Petitioners limits HTS category 4421 to solid wood moulded products, while curve panels are the result of moulding plywood, not solid wood. Although asserting that this distinction is important,[67] Fairmont has not provided any support for its assertion that HTS category 4421 is limited to solid wood and does not include moulded plywood. Both moulded solid wood and moulded plywood are moulded wood products

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[64] See Petitioners' Post-Preliminary SVs Submission (March 4, 2010) at Attachment 12-A.
[65] Fairmont, however, disagrees with the surrogate data used to value plywood and curve panel in the Preliminary Results. See Fairmont's Case Brief, Volume II, at 9-10 and the above Comment. Fairmont proposes that the Department value plywood and curve panel using 2008 plywood pricing data from the PWPA because it is the best information available on the record to value these two inputs. See id. at 11-16.
[66] See Fairmont's August 19, 2010 response at 32.
[67] See Fairmont's Case Brief, Volume II, at 22.

and, as such, fit into a moulded wood category. We further note that HTS subheading 4421.90, which is one of the two HTS subheadings Fairmont claims would not contain curve panels, includes, handbag frames, paddles and ores, fans, and coffins,[68] all of which could consist of moulded or shaped wood products similar to Fairmont's curve panels. In addition, we find the above referenced CBP ruling determined that HTS heading 4421 is the proper HTS classification for drawer front panels in addition to moulding. The Department finds drawer front panels to be similar to, if not the same (in the case of curved drawer front panels) as Fairmont's curve panels, and thus we find the CBP ruling to be informative with regard to this issue.

While ultimately concluding that the curve wood should be categorized under HTS 4421, Petitioners argue that, based on the above-cited CBP ruling, the Department could also consider the curve wood under HTS category 9403.90 if the Department concludes that the curve wood is clearly identifiable as a furniture part.[69] Otherwise, Petitioners note that the CBP ruling finds that curve wood should be classified under HTS heading 4421. The CBP ruling referenced above also cited previous rulings that noted that the products classified in heading 9403 were worked in a manner that dedicated them for use as furniture.[70] While Fairmont argues that 9403 is not an appropriate category because curve wood is an intermediate input, or semi-finished part,[71] it has alternately has stated that its tollers made curve panels to be "made by heat-pressing various glued plies of such thin materials into a curve-shape furniture part, used mainly for structure enhancements (when solid wood does not meet the strength requirement) or exterior cosmetics (usually carved or sculptured) of table posts, cabinets base, etc."[72] Therefore, we find that, consistent with Fairmont's statements that its curve wood is identifiable as a furniture part, its curve wood should be classified under HTS subheading 9403.90, which contains furniture parts.

Comment 6: Expanded Polyethylene Sheet

Fairmont originally reported that its expanded polyethylene sheet (EPE sheet) would be classified under HTS subheading 3920.10, which consists of polymers of ethylene.[73] However, upon being informed by the Department that HTS heading 3920 contained only non-cellular plastic, Fairmont later revised its proposed classification of EPE sheet to HTS subheading 3921.11.10, which consists of polymers of styrene. In the Preliminary Results, the Department valued Fairmont's EPE sheet using Philippine imports under HTS subheading 3921.11.10.[74]

- Petitioners argue that the HTS subheading used by the Department is incorrect because Fairmont's EPE sheet does not consist of polymers of styrene.[75] Petitioners recommend

[68] See Petitioners' SV Submission (July 20, 2009) at Exhibit 3.
[69] See Petitioners' Case Brief, at 46.
[70] See Petitioners' Post-Preliminary SVs Submission (March 4, 2010) at Attachment 12-A at 3.
[71] See Fairmont's Rebuttal Brief, Volume II, at n. 52.
[72] See Fairmont's August 19, 2009 submission at 32.
[73] See Fairmont's May 26, 2009 submission at FD-Exhibit AA-4.
[74] See the Preliminary Results Analysis Memo.
[75] See Fairmont's June 15, 2009 submission at FD-Ex D-4-1.

that the Department value Fairmont's EPE sheet using HTS subheading 3921.19.99 (Other plates, sheets, film, foil and strip, of plastics . . . Cellular -- Of other plastics . . . Other: Other) or, if the Department determines that Fairmont's EPE sheet is more appropriately categorized as a sheet, HTS subheading 3921.19.19 (Other plates, sheets, film, foil and strip, of plastics . . . Cellular - Of other plastics . . . Plates and sheets forms – Other).

- Fairmont argues that if the Department determines HTS subheading 3921.11.10 is incorrect then it should use Philippine import data under HTS subheading 3921.19.19 to value its EPE sheet inputs, and that the Department should exclude data from Japan and the United States because the import data from these two countries are aberrational. Fairmont argues that the import quantities from both countries are low and that the high average price of imports from each country are not comparable to the other imports under HTS subheading 3921.19.19. Fairmont further argues that the Department has recognized that an SV is aberrational on its face where, as here, the SV is based on a low quantity and has a high per-unit value compared to other record data.[76]

Department's Position:

We agree with Petitioners that, in the Preliminary Results, the Department incorrectly classified Fairmont's EPE sheet under a category for products containing styrene. Fairmont did not report that its EPE sheet contains styrene[77] and Fairmont does not argue otherwise in its rebuttal brief.[78] The description of the input provided by Fairmont is consistent with the description for HTS subheading 3921.19.19, cellular, sheets of polymers of ethylene not otherwise specified in HTS heading 3921 and not used in telephonic or electric wire.[79] In this regard, we note that the 19.19 subcategory is only distinguished from the 19.90 subcategory by whether the input is in plate or sheet form (19.19) or not (19.90). Because Fairmont has reported this input as "EPE sheet,"[80] we have valued it for the final results based on Philippine HTS subheading applicable to "sheets."

We do not agree with Fairmont that Philippine imports from Japan and the United States under HTS subheading 3921.19.19 are aberrational. The Philippine import data under HTS subheading 3921.19.19 cover imports from six countries that the Department finds reliable sources of SVs (i.e., excluding all NME countries and countries receiving widely available export subsidies). The AUVs of imports from Malaysia and Hong Kong are approximately $3/kg; the AUVs of imports of Taiwan and Germany are approximately $7/kg; and the AUVs of the United States and Japan are approximately $20/kg. Further, the imports from the United States and Japan

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[76] See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and accompanying Issues and Decision Memorandum, at Comment 2 (June 6, 2005)(citing Heibei Metals & Minerals Import & Export Corp. v. United States, Slip Op. 04-88 (CIT 2004)).
[77] See Fairmont's June 15, 2009 submission at FD-Exhibit 4-1.
[78] See Fairmont's Rebuttal Brief, Volume II, at 23-24 (limiting its argument to the aberrational values in subcategory 19.19).
[79] See id.
[80] See Petitioners' July 20, 2009 submission at Exhibit 3.

comprise approximately 15 percent of the total quantity of all imports under HTS subheading 3921.19.19. Thus, there appears to be a relatively wide, but equal distribution of AUVs among Philippine imports from these six MEs and while the AUVs of imports from the United States and Japan are on the high end of this distribution, imports from these countries represent a significant quantity. Thus, it is impossible based on the import data alone to determine the import values from the United States and Japan are any more aberrational than Philippine imports from the other four countries. Fairmont has not cited any evidence, aside from the AUVs, demonstrating that Philippine imports from the United States and Japan are aberrational. Therefore, for these final results, we have valued Fairmont's EPE sheet inputs based on Philippine imports of HTS subheading 3921.19.19.

Comment 7: Bon Feet

To value Fairmont's bon feet in the Preliminary Results, the Department relied on Philippine imports of HTS subheading 9403.90, as recorded by the Philippine NSO.

- Petitioners argue that Fairmont's bon feet should be classified under HTS subheading 4421.90.99, which includes "other articles of wood…other…other." Petitioners claim that HTS 9403.90 only contains finished furniture parts and since Fairmont's bon feet are not in a finished condition where they are ready to be affixed to a piece of furniture they are an intermediate input. Petitioners further note that Fairmont has also argued that its bon feet should be classified under HTS subheading 4421.90.99.
- Fairmont did not comment on this issue.

Department's Position:

In the Preliminary Results, we classified bon feet under HTS subheading 9403.90 stating that Fairmont has not provided any support for its assertion that HTS subheading 9403.90 only contains finished furniture parts and record evidence does not indicate that the bon feet to be valued were unfinished. However, in their case brief, Petitioners cited Customs Ruling HQ 965594 which explains that a furniture part under Heading 9403 must be "ready in its condition . . . to be affixed to a particular piece of furniture" and should have "features, such as cutouts, miter cuts, notches, etc., which identify it as a part of furniture."[81] We note that Fairmont has previously stated that the bon feet it received from its suppliers were in a primary form as they were without boring (drilling), painting or finishing.[82] Because Fairmont's bon feet are not "ready in {a} condition . . . to be affixed to a particular piece of furniture," consistent with Customs Ruling HQ 965594, for the final results, we find that they cannot be classified under HTS subheading 9403.90. Articles of wood are classified under HTS heading 4421, and articles of wood not otherwise categorized within HTS 4421.90 are classified under HTS subheading 4421.90.99. Therefore, for these final results, we have classified all of Fairmont's purchased bon feet using Philippine imports under HTS subheading 4421.90.99.

[81] See Petitioners' March 4, 2010 submission at Attachment 12-A.
[82] See Fairmont's August 19, 2009 submission at 31 and 32.

Comment 8: Poly Vinyl Chloride Veneer

In the Preliminary Results, when converting Fairmont's poly vinyl chloride (PVC) veneer from square meters to kg, the Department relied on the conversion rate Fairmont had reported that was purported to be based on measurements listed on purchase records.[83]

- Petitioners argue that for the final results, the Department should use a conversion factor that accurately reflect the measurements contained in Fairmont's purchases records, which supposedly were the basis for the conversion rate Fairmont had reported to the Department.[84]
- Fairmont did not comment on this issue.

Department's Position:

The Department agrees with Petitioners that Fairmont's conversion rate reported to the Department did not accurately reflect the data contained on its purchase documents because it was only a midpoint of rates identified by Fairmont. Therefore, for the final results, we are using the conversion rate based on a weighted-average measurement from all of Fairmont's POR purchases of PVC veneer in its October 14, 2009 submission at Exhibit FD-SE-3D-49.[85]

Comment 9: Name Corrections

Great Rich (HK) Enterprises Co., Limited (Great Rich), Coronal Enterprises Co., Ltd. (Coronal Enterprises), Dongguan Wanhengtong Industry Co., Ltd. (Dongguan Wanhengtong), Season Furniture Manufacturing Co., Ltd., and Season Industrial Development Co., Ltd. requested that the Department correct minor discrepancies in the names for the above companies that appeared in the Initiation Notice when compared to the names listed in their separate rate certifications filed on March 30, 2009.[86] In the Initiation Notice, the Department initiated on the following companies:

- Dongguan Liaobushangdun Huada Furniture Factory,* Great Rich (HK) Enterprise Co. Ltd.*
- Dongguan Hung Sheng Artware Products Co., Ltd.,* Coronal Enterprise Co., Ltd.*
- Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd.,* Dongguan Wanengtong Industry Co., Ltd.*
- Season Furniture Manufacturing Co.,* Season Industrial Development Co.*

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[83] See Fairmont's October 14, 2009 submission, at its answer to question 49.
[84] See Fairmont's September 18, 2009 submission at 2SD-17 and October 14, 2009 submission at Exhibit FD-SE-3D-49.
[85] See the Final Results Analysis Memo.
[86] See Initiation of Antidumping Duty Administrative Review, 74 FR 8776 (February 26, 2009).

They state the corrected names are as follows:

- Dongguan Liaobushangdun Huada Furniture Factory,* Great Rich (HK) Enterprise**s** Co. Ltd.*
- Dongguan Hung Sheng Artware Products Co., Ltd.,* Coronal Enterprise**s** Co., Ltd.*
- Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd.,* Dongguan Wan**h**engtong Industry Co., Ltd.*
- Season Furniture Manufacturing Co., **Ltd.,*** Season Industrial Development Co. **Ltd.***
- Petitioners did not comment on this issue.

Department's Position:

The Department has updated the names as specified by the companies both in the final results and in the customs module, agreeing with the respondents that these are only "typographical errors and are not the result of any type of official name change for the companies concerned or any change in organizational type or structure."

Comment 10: Ministerial Errors

A. Incorrect Physical Characteristic Codes and Control Numbers

- The Department stated in the Preliminary Results Analysis Memo that it was applying minor corrections reported by Fairmont at verification to products for which Fairmont had previously weight-averaged certain fields based on the incorrect physical characteristic codes and control numbers.[87] Petitioners note that the changes were submitted by Fairmont in a database but that in the Preliminary Results, due to coding errors in the calculation of Fairmont's dumping margin, the Department failed to apply all of corrections in the submitted database.
- Fairmont did not comment on this issue.

Department's Position:

We agree with Petitioners. For the final results, the Department has corrected the coding errors and thereby incorporated all changes in the database submitted by Fairmont regarding its minor corrections to products for which it had previously weight-averaged certain fields based on the incorrect physical characteristic codes and control numbers.

B. Error In Applying Other Transportation Costs

- The Department stated in the Preliminary Results Analysis Memo that it was applying minor corrections reported by Fairmont at verification to other transportation costs

[87] See the Preliminary Results Analysis Memo at 18 and 24.

incurred in the United States.[88] However, according to Petitioners, the Department applied the reported corrections to international freight, rather than to other transportation costs incurred in the United States.
- Fairmont did not comment on this issue.

Department's Position:

We agree with Petitioners. For the final results, the Department has applied the corrections reported by Fairmont to other transportation costs incurred in the United States.

C. Programming Errors For Other Transportation Costs

- Fairmont notes an error in how international freight and other transportation costs were calculated, but Fairmont's comments are unrelated to Petitioners' comments discussed above.
- Fairmont notes that the Department stated in the Preliminary Results Analysis Memo that it was applying minor corrections reported by Fairmont at verification to other transportation costs incurred in the United States and to international freight costs.[89] However, in the preliminary margin calculation, the Department recalculated Fairmont's other transportation costs incurred in the United States and international freight costs in the incorrect sequence and thereby the corrections were not accounted for in Fairmont's dumping margin. Specifically, at line number 1603 of the SAS program used to calculate the preliminary margin, the Department calculated a total of international and U.S. movement charges and it was this total that was later deducted from U.S. price in calculating the U.S. net price. However, only in the subsequent line numbers 1630-1640 of the same SAS program did the Department revise international freight and other U.S. transportation costs in accordance with the minor corrections reported by Fairmont at verification.
- Petitioners did not comment on this issue.

Department's Position:

We agree with Fairmont. For the final results, the Department has reordered the programming language so that the minor corrections reported by Fairmont at verification to other transportation costs incurred in the United States and to international freight are applied prior to the calculation of total adjustments to U.S. price.

Comment 11: Water-Based Polymer Isocyanate

Fairmont's water-based polymer isocyanate adhesive is a water-based adhesive that includes the ingredient ethylene vinyl acetate (EVA). Because EVA both in a primary and granular form is

[88] See the Preliminary Results Analysis Memo at 26.
[89] See the Preliminary Results Analysis Memo at 26.

classified under HTS subheading 3901.90.20 (Polymers of ethylene, in primary forms . . . Other . . . Granules), in the Preliminary Results, the Department used this subheading to value Fairmont's water-based polymer isocyanate adhesive input.

- Petitioners argue that Fairmont's water-based polymer isocyanate adhesive is an adhesive, not a polymer of ethylene in primary form and while Fairmont's water-based polymer isocyanate adhesive contains EVA, Petitioners note that Fairmont has stated that it also contains "polyvinyl alcohol, a mixture of calcium carbonate nonpolar, water."[90] Thus, Petitioners argue that the Department erred by inappropriately classifying Fairmont's water-based polymer isocyanate adhesive using the subheading of only one of its components (i.e., EVA) and that the appropriate classification is subheading 3506.91, which includes adhesives based on polymers of HTS heading 3901 (EVA in its primary form is classified under HTS heading 3901).
- Petitioners note that Fairmont initially stated that HTS 3506.91 is the appropriate HTS for valuing this input.[91]
- Fairmont agrees with the Department's classification of water-based polymer isocyanate adhesive in the Preliminary Results and notes that it has noted no disagreement with the Department's preliminary classification.
- Fairmont argues that, as noted by the Department, Fairmont purchased the EVA in its granular form and not as a prepared adhesive for retail sale.[92] Fairmont further argues that the Department's classification is correct as EVA in its granular form is classified under HTS subheading 3901.90.20.

Department's Position:

Fairmont's argument suggests that because this water-based polymer isocyanate adhesive contains EVA copolymer in granular form, this is determinative of the HTS category which the Department should use. However, as Petitioners have noted, Fairmont stated that this adhesive consists not only of EVA copolymer, but also, inter alia, polyvinyl alcohol, a mixture of calcium carbonate, non-polar, and water.[93] Accordingly, because the input consists of more than EVA copolymer and Fairmont has identified the input to be an adhesive,[94] the Department is classifying water-based polymer isocyanate adhesive as an adhesive. Specifically, adhesives based on EVA polymers are classified under Philippine HTS subheading 3506.91. Therefore, for

[90] See Fairmont's June 15, 2009 submission at FD-Ex D-4-1. The factor descriptions in Fairmont's submission were made public in a memorandum from the Department to all interested parties, dated July 9, 2009, with the subject line "Making Certain Information Publicly Available."
[91] See Fairmont's August 19, 2009 submission at 3SE-27-28; See Petitioners' December 10, 2009 submission at Exhibit 5.
[92] See the Preliminary Results SV Memo at 6, 12.
[93] See Fairmont's June 15, 2009 submission at FD-Ex D-4-1. The factor descriptions in Fairmont's submission were made public in a memorandum from the Department to all interested parties, dated July 9, 2009, with the subject line "Making Certain Information Publicly Available."
[94] See id.

these final results, the Department has valued Fairmont's water-based polymer isocyanate adhesive based on Philippine imports of HTS subheading 3506.91.

Comment 12: Inland Freight

In the Preliminary Results, we calculated the SV for truck freight using Philippine data from two sources: 1) Camarines Sur, available at the Philippine government's website for the province: http://www.camarinessur.gov.ph; and 2) a news article from the Manila Times entitled "Government Mulls Cut in Export Target." [95]

- Fairmont argues that Indian truck freight rates published by Infobanc on its website[96] represent the best available information on the record to calculate the SV for truck freight because the Infobanc data are country-wide unlike the data used in the Preliminary Results. Fairmont argues that when selecting SVs the Department has a preference for selecting SVs that have "a broad market average covering a range of prices."[97]
- Fairmont asserts that Infobanc provides truck freight rates for routes involving a variety of large cities in India while the Philippine data used by the Department only represents truck freight rates between two routes: (1) Naga City and Manila; and (2) Cebu and Manila.
- Fairmont also argues that despite the fact that the Infobanc data are not from the surrogate country, the Infobanc data should still be considered because India was one of six countries identified in this review to be an appropriate surrogate country.[98]
- Fairmont also argues that the Infobanc data are contemporaneous with the POR in contrast with the Philippine data used in the Preliminary Results. Of the two Philippine sources, Fairmont argues the Camarines Sur data have a copyright date of 2009 but does not state a specific date for which the proposed truck freight rates were in effect, while the second source, the 2007 Manila Times article, cites a World Bank study that must be based on rates in effect prior to the 2007 publication date of the article.
- Fairmont further argues that the Infobanc data are more representative of inland truck freight rates in the PRC because the Philippines, unlike the PRC and India, is an island nation.[99] Fairmont argues that different islands in the Philippines necessitate the need for some shipments to travel by sea or air when the origin and destination of the trip are on different islands that are not connected by bridges or tunnels.
- Fairmont notes that the Department, in calculating the SV for truck freight, did so on the basis that a 10-wheel truck has a payload capacity of 9,000 kgs. Fairmont argues that

[95] See Preliminary Results SV Memo at 14 and Attachment VI.
[96] See Fairmont's March 4, 2010 submission at Exhibit 5-E.
[97] See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726, (March 17, 2010), and accompanying Issues and Decision Memorandum at Comment 1.
[98] See the WBF Surrogate Country Memo.
[99] See Fairmont's August 11, 2009 submission at Exhibit 4; See also Fairmont's December 10, 2009 submission at Exhibit 5.

there is no evidence on the record that a 10-wheel truck has a payload capacity of only 9,000 kg. Fairmont argues that instead, there is substantial evidence on the record to support the conclusion that a 10-wheel truck has at least a carrying capacity of 21,600 kg (i.e., equivalent to a 20-foot container). First, the truck freight discussed in the Manila Times articles were based on shipments involving 20-foot and 40-foot containers, which have a payload capacity of 21,600 kg and 26,580 kg, respectively.[100] Second, Fairmont states that an 18-wheel truck in the United States is a 10-wheel truck with an 8-wheel trailer.[101] An 18-wheel truck and trailer typically hauls 48-foot to 53-foot containers.[102] Fairmont argues that this indicates that the 9,000 kg capacity of a 10-wheel truck used to calculate the SV is too little. Third, Fairmont argues that calculating truck freight from the Camarines Sur data using the conversion rate for a 20-foot container provides a freight rate comparable to the other truck freight rates on the record (i.e., Cebu to Manila (July 2, 2007, Manila Times article), General Santos City and Manila (February 19, 2009 Manila Times article), and Indian data (Infobanc)).[103]

- Fairmont argues that if the Department does not rely on the Infobanc data from India, the Department must either: (1) use an appropriate conversion rate to calculate the truck freight between Naga City and Manila (i.e., at least for a 20-foot container); or (2) exclude the Camarines Sur data from the calculation of inland truck freight.
- Fairmont also argues that the Camarines Sur data only provide a range of truck freight prices. Fairmont argues that there is no substantial evidence on the record to demonstrate that an average of the range of prices represents an average price between these destinations. Fairmont further argues that these data are not as specific as the Indian data, which provides rates by city per month, allowing the Department to confirm the calculation of the average truck freight rate.
- Petitioners argue that the SV for inland freight should not be revised for the final results.
- Petitioners assert that Fairmont has not argued that the Philippine truck rate is aberrational or otherwise unusable. Petitioners argue that the Department does not consider alternative SV data from a secondary surrogate country where, as here, reliable data from the primary surrogate country are available.[104] Petitioners also argue that the Department has previously used Camarines Sur data to value inland freight[105] and that Fairmont provides no compelling reason to depart from this source.

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[100] See Fairmont's July 20, 2009 Submission (providing truck freight cost for shipment of supplies in two 40-foot and one 20-foot containers from General Santos City to Manila); Petitioners' July 20, 2009 Submission (providing freight rates for 20-foot container shipment between Cebu and Manila).

[101] See Fairmont's March 4, 2010 SV Submission at Exhibit 5-F.

[102] See id.; Fairmont's Resubmission of March 17 SV Comments, at Exhibit 10 (page 5 of Wikipedia article on containerization).

[103] See Fairmont's March 5, 2010 Submission at Exhibit 5-C.

[104] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comments 5A and 5D; See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (FR May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

[105] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and

- Petitioners further argue that the 9,000 kg per 10-wheel truck is the conversion factor used by the Department in the previous reviews,[106] and it is reasonable to conclude that the source document appears on the record of one of those earlier segments. Petitioners further argue that if the Department deems it appropriate, it may place the source document for this conversion factor on the record of the instant review. Petitioners further argue that Fairmont provides no evidence that the 9,000 kg per 10-wheel truck conversion factor is incorrect or aberrational and that Fairmont also provided no alternative conversion factor information applicable to 10-wheel trucks.

Department's Position:

While the Department normally does not use data from an alternative surrogate country when reliable data from the primary surrogate country are available,[107] we believe for the following reasons that the sources used to calculate truck freight in the Preliminary Results are not the best information on the record.

First, the Department notes that there is nothing on the record that supports the fact that a 10-wheel truck could not carry a larger load such as a 20-foot container for which the capacity is 21,727 kg. We further note that the Infobanc data cover a multitude of routes through a variety of cities and thus is far more representative of nation-wide prices than the Philippine data from the Preliminary Results, which only cover truck freight rates between two routes: (1) Naga City and Manila; and (2) Cebu and Manila.[108] This fact is important as the Department has a preference for selecting SVs that have "a broad market average covering a range of prices."[109]

In addition, while the Camarines Sur data have a copyright date of 2009, the period that the data represents cannot be conclusively confirmed. Also, the Manila Times article used in the Preliminary Results was published in 2007. These are in contrast with Indian Infobanc data

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Decision Memorandum at Comment 11; See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of New Shipper Review, 74 FR 31244, 31248 (June 30, 2009); Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372, 6384 (February 9, 2009); Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 1; Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review, 73 FR 8273, 8285 (February 13, 2008).

106 See Petitioners' July 20, 2009 submission at Attachment 7.

107 See 19 CFR 351.408(c)(2); Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comments 5A and 5D; See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision memorandum at Comment 2.

108 See Preliminary Results SV Memo at 14 and Attachment VI.

109 See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

which clearly identifies the applicable period of the data, which is contemporaneous with the POR.

We further note that the Camarines Sur report gives a range of prices and states that "rates vary depending on truck load and exact destination." We note that in addition to not knowing the exact prices of the Camarines Sur data or how they were calculated, we have no knowledge if these prices represent transaction prices, price quotes, or costs. We further note that the Infobanc data represent actual transaction prices for a variety of cities during a period that covers the POR.

We further note that the February 19, 2009, Manila Times article that was submitted by Fairmont in its original SV submission[110] is also not reliable for use as an SV. The Department notes that the central purpose of this article is to describe the efforts of a local celebrity who provided a donation of medical equipment. There is no way to determine the validity of the price listed in the article for freight expenses. The price was quoted to reflect the costs of a volunteer effort paid by a local celebrity for inland freight.

The Department has determined that the Indian Infobanc data are the only data on the record that are contemporaneous, country-wide and which clearly identify the relevant time period, exact prices, distances, and weights. We further note that the Department has previously listed India as a suitable surrogate country for this segment of the proceeding.[111] For these reasons in the final results, we will value Fairmont's inland freight expenses using Indian Infobanc data.

Comment 13: Marine Insurance

In the Preliminary Results, the Department applied an SV for marine insurance to those ME purchases by Fairmont for which it paid marine insurance.

- Fairmont argues that an SV should not be applied for marine insurance to their ME purchases, because it purchased marine insurance for all market purchases from an ME provider and stated this fact on the record.[112]
- Fairmont argues that if the Department uses surrogate data to value marine insurance rather than Fairmont's ME purchase price, the Department: (i) should not inflate the marine insurance rate by 10 percent; and (ii) should include the marine insurance rate it submitted for Carex.[113]
- Petitioners assert that in situations where the ME provider did not pay for marine insurance the Department appropriately applied an SV for marine insurance.
- Petitioners also note that the Department did not apply an SV for marine insurance to Fairmont's U.S. sales and that where the Department did apply an SV for marine

110 See Fairmont's July 20, 2009, submission at Exhibit 9.
111 See WBF Surrogate Country Memo.
112 See Fairmont's September 22, 2009 submission at 2SD-27.
113 See Fairmont's August 31, 2009 SV Submission at Exhibit 7.

insurance to ME purchases, the rate did not include the necessary war risk premium charged by Carex.

Department's Position:

Fairmont reported that for all ME purchases in which the seller did not provide marine insurance, it purchased marine insurance from an ME provider paid for in an ME currency.[114] The Department's regulations provide that when a factor is purchased from an ME supplier and paid for in an ME currency, the Department normally will use the price paid to the supplier to value the input.[115] Accordingly, we agree with Fairmont that, for all applicable ME purchases, we should value the insurance by the rate reported by Fairmont,[116] rather than an SV.

The Department disagrees with Petitioners that it should value the marine insurance that Fairmont incurred separately from purchases using an SV. Fairmont purchased this separate marine insurance from an ME supplier in ME currency.[117] Thus, for the reasons described above, for these final results, the Department has determined to value this separately purchased marine insurance using the price paid to the ME supplier.

Comment 14: Indirect Selling Expenses

In the Preliminary Results, the Department reduced Fairmont's U.S. price for CEP sales by its U.S. ISEs.

- Fairmont argues that the Department has concluded and the CIT has found that in NME cases it should not adjust U.S. sales prices for U.S. ISEs. Fairmont further notes that the U.S. indirect selling cost ratio includes company-wide actual interest costs, which are included in the Philippine companies' costs used to calculate Fairmont's surrogate financial ratios and that this is an instance of impermissible double counting. Fairmont thus argues that if its U.S. price is reduced by U.S. ISEs, then NV should similarly be reduced for ISEs and financial costs in order to achieve a fair "apples-to-apples" comparison.
- Petitioners argue that Fairmont's arguments contravene section 772(d) of the Act, which states that CEP "shall be reduced by" all selling expenses, direct and indirect, associated with economic activities occurring in the United States.
- Petitioners note that the Department routinely deducts U.S. ISEs from CEP in NME cases.[118] Petitioners believe Fairmont's reliance on the CIT's Shandong ruling is

[114] See Fairmont's September 22, 2009 submission at 2SD-27.
[115] See 19 CFR 351.408(c)(1).
[116] See Fairmont's October 14, 2009 submission at 3SD5-6, FD-Exhibit-SE-3D-8.
[117] See Fairmont's October 14, 2009 submission at C-28 at Exhibit 8.
[118] See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, in Part, of the Fourth Administrative Review, 75 FR 12206, 12213 (March 15, 2010); Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary

misplaced, for the CIT upheld the Department's decision not to make a circumstances-of-sale adjustment to NV for commissions in the NME context. Petitioners also note that by arguing that if the Department deducts ISEs from CEP, then NV should similarly be reduced for ISEs, and Fairmont would be seeking a CEP offset. Petitioners argue that the Department has determined that section 773(c) of the Act, which governs the calculation of NV in NME cases, "contains no provision for a level-of-trade adjustment or a CEP offset or, for that matter, a COS adjustment."[119] Rather, CEP adjustments are set forth only in section 773(a), of the Act which applies only in ME cases.[120] Petitioners note that the Department confirmed this interpretation of the statute in the third review of this order.[121]

- Petitioners argue that even if a CEP offset were permitted under the statute, there is no record evidence that would allow the Department to determine whether Fairmont would qualify for an offset. Petitioners assert that Fairmont makes no argument, and cites no evidence, to demonstrate that its CEP sales were made at a less advanced stage of distribution in comparison to those sales made by the surrogate Philippine producers.
- Petitioners assert that Fairmont fails to identify which expense items on the Philippine financial statements should be deducted from NV. Moreover, Petitioners add that it is impossible for Fairmont to demonstrate that any such expense items are comprised solely of the ISEs that properly are the subject of an offset.[122]

Department's Position:

We disagree with Fairmont. Fairmont's arguments contravene section 772(d) of the Act, which states that CEP "shall be reduced by" all selling expenses associated with economic activities occurring in the United States. Therefore, Department practice is to deduct U.S. ISEs from CEP sales in NME cases.[123] Fairmont's reliance on Shandong and the underlying remand redetermination in that case is misplaced. That proceeding related to whether the Department

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Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 11847, 11852 (March 12, 2010).

[119] See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) (OTR Tires) and accompanying Issues and Decision Memorandum at Comment 52.

[120] See id.

[121] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 17.

[122] See OTR Tires, 73 FR 40485, and accompanying Issues and Decision Memorandum at Comment 52.

[123] See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 74 FR 32539, 32542 (July 8, 2009) (unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010)); Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results, 74 FR 21317 (May 7, 2009) (unchanged in First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009)).

should adjust NV and does not support refraining from adjusting CEP as required by the Act.[124] Shandong is discussed further below.

In the alternative, Fairmont argues that, if the Department reduces CEP by ISEs, then the Department should similarly deduct ISEs from the NV side of the dumping calculation. Generally, such a reduction in NV is considered a CEP offset under section 773(a)(7)(B) of the Act. In the aforementioned Shandong litigation, the Department considered whether an adjustment to NV was appropriate in an NME proceeding. The Department determined, and the court affirmed, that the Department was not required to make an adjustment to NV because the requesting party had failed to provide sufficient evidence to support the adjustment.[125] In affirming the Department, the CIT affirmed the well-established principle that the party seeking an adjustment bears the burden of proving entitlement to such an adjustment.[126]

The Department only reduced CEP sales by ISEs, and thus Fairmont's burden is to identify indirect selling costs incurred by the foreign selling arms of Philippine furniture companies used to calculate surrogate financial ratios. Fairmont has not identified any such costs. The reason Fairmont was not able to identify such costs is because the companies whose data were the basis for the surrogate financial ratios were either primarily or exclusively furniture manufacturers similar to DGSR and TCSR. For example, these surrogate companies did not have overseas affiliates on their financial statements. Moreover, the Department rejected companies that had substantial retail operations.[127] Thus, the financial statements of factories used to calculate surrogate financial ratios contain no charges corresponding to FDUSA's indirect selling costs. Because Fairmont has failed to identify any instance of double-counting of indirect selling costs, Fairmont has failed to demonstrate entitlement to such an adjustment to NV and, therefore, the Department has not adjusted the calculation of financial ratios.

Comment 15: Gross vs. Net Weight

- The Coalition argues that in using the NSO data, the Department should rely on gross weight rather than net weight.[128] The Coalition argues that in the 3rd WBF Review Final parties noted that Philippine importers were only required to report gross weight and that net weight was derived using a standard conversion factor.[129] The Coalition also states

[124] See Shandong Huarong Mach. Co. v. United States, 31 CIT 1815, 1834 (2007).
[125] See id.
[126] See id.
[127] See Comment 30.
[128] In its case brief, the Coalition uses Quantity 2 to refer to net quantity. This is demonstrated at 13 of their case brief in which they note that under HTS 4421.90.99 the unit of measure for Quantity 2 is pieces, which corresponds to net quantity. Because there is only one other quantity field, and this field contains gross quantity, the Department deduced that the Coalition uses Quantity 1 refers to gross quantity.
[129] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum, at Comment 2 (3rd WBF Review Final). The Coalition cited to a decision on a different date, but then discussed the issues relating to this decision.

that in the 3rd WBF Review Final the Department noted disparities in reported quantities which indicated anomalies or errors in the data, which also exist in this review.[130] As an example of such inconsistencies, the Coalition cites to the NSO data for Philippine imports of HTS subheading 4421.90.99 (consisting of wood articles, other) in which the gross and net quantities are nearly all identical despite the unit of measurement of gross quantities being kilograms and net quantity being pieces.

- The Coalition also cites to the NSO data for Philippine imports of HTS subheading 4412 (consisting of plywood[131]) in which the Coalition argues that the conversion rate between gross weight, for which the unit of measure is kilograms, and net weight, for which the unit of measure is cubic decimeters, is 0.848 kilograms per cubic decimeter for a majority of countries. The Coalition states that this consistent relationship demonstrates that net quantity was derived rather than reported.
- The Coalition contends that since the import value includes packing, the denominator should be gross weight, which includes the weight of the packing.
- Petitioners assert that the Coalition cites to no evidence to support its assertion that net weight is derived, unlike the evidence presented by Petitioners in the Preliminary Results.[132]
- Petitioners argue that even if the "disparities" cited to by the Coalition existed, there would be no basis to determine which quantity field was incorrect or aberrational. Petitioners cite to the Preliminary Results in which the Department stated that, "{a}lthough Fairmont has identified several large differences between net weight and gross weight, such differences do not demonstrate that one basis of measurement is any more accurate than the other."[133] Petitioners conclude that the alleged "disparities" provide no basis to reject quantity data on a net kilogram basis in favor of alternative quantity data on a gross kilogram basis. Petitioners also refute the Coalition's argument regarding the conversion factor for imports of plywood within HTS 4412. Regardless, to the extent that Philippine customs officials used a "standard conversion factor," Petitioners assert that the Coalition makes no argument that the conversion factor itself was incorrect or aberrational and thus that there is no basis for the Coalition's assertion that the cubic decimeter quantity field is inaccurate and unreliable.
- Next, Petitioners note that the units of measurement of subheadings at the 10-digit level for both gross and net quantities, with the exception of one subheading, are gross weight in kilograms.[134] Petitioners explain that despite using the terms gross quantity and net quantity in column headings because the units of measurement for gross weight and net weight are the same for the underlying HTS subheading 4421.90.99, the gross quantities (measured in kilograms) are the same as net quantities (also measured as gross weight in kilograms).

[130] See id.
[131] The Coalition cited to HTS 4421, but their discussion concerns plywood, which corresponds to HTS 4412.
[132] See SVs Memorandum at 2.
[133] See id.
[134] See Petitioners' July 20, 2009 submission at Attachment 1, Exhibit 2 (raw NSO data).

- With regard to the Coalition's argument that "{d}ividing gross values by net weights is akin to dividing apples and oranges," Petitioners note that there is no "gross value" and "net value" for imported goods. Petitioners argue that there is only the "value," which must be attributed solely to the imported good itself, and not to the shipping containers and other outer packing materials in which the good was transported at the time of entry and that these outer packaging materials are not directly linked to the value of the imported goods contained therein. Petitioners assert that there is no reason why the weight of such outer containers should be considered in determining the per-unit value of the imported item.
- Petitioners argue that in order to compare "apples-to-apples," SVs must be determined on a net weight basis. Because per unit SVs are multiplied by consumption rates to calculate FOPs, Petitioners believe it is critical that the SVs and reported consumption rates be stated on the same "apples-to-apples" basis. Petitioners argue that the respondents report their consumption rates on an unpacked basis. Accordingly, Petitioners argue that the SV, to be consistent with the reported consumption rate, must be stated on a value per net weight of the input material. Petitioners conclude that because Fairmont reported its consumption rates on a net weight basis,[135] it would be distortive if the SVs for Fairmont's inputs were not also stated on a value per net weight basis.
- No other party commented on this issue.

Department's Position:

The Coalition's arguments cover much of the same information that we covered in the Preliminary Results, wherein the Department found no inaccuracies in the net quantity recorded in the NSO data but did note two important advantages to basing SVs on NSO data: (1) The NSO prices reflect the price of the input, insurance, and freight (i.e., CIF), while the WTA data only reflects FOB prices. CIF prices are consistent with the surrogate prices often used by the Department in NME cases (e.g. Indian WTA data reflect CIF);[136] and (2) Fairmont reported input consumption using net quantity rather than gross quantity (as all companies responding to a Department FOP questionnaire normally do). If the Department were to rely on gross quantity, as argued for by the Coalition, this approach would not capture the total input cost. Thus, because of these two significant reasons, we have determined that basing SVs on net quantity recorded in the NSO data provides a more accurate SV than gross quantity recorded in either the NSO or WTA data.[137] Furthermore, and as will be discussed in greater detail below, no party has demonstrated that gross quantity recorded in either the NSO or the WTA data is more accurate than net quantity recorded in the NSO data.

[135] See Preliminary Results, 75 FR at 5962 ("The Philippines NSO is the only data source on the record that provides data on a net weight basis, which is the same basis as reported by the respondent in reporting its FOP").
[136] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001).
[137] Gross quantity in the NSO and WTA data sources are identical because they are from the same source. See Petitioners August 21, 2009 submission at page 1 and the table entitled "Source of Data" contained in Exhibit 2.

The Coalition argues that the Department should not divide total import value by net weight because the import value is inclusive of packing which means that it is mathematically correct to divide by gross weight, i.e., the numerator includes packing while the denominator does not. The Coalition's argument is incorrect. Because Fairmont reports input quantities in its FOP spreadsheet based on unpacked quantity (i.e., net weight), the only possible way to capture the entire cost of the input cost (in this case the total import cost) is by dividing by net weight (i.e., unpacked weight). To do otherwise would result in a failure to capture the total input cost (i.e., import cost).

Prior to the Preliminary Results, Fairmont identified several large differences between net weight and gross weight and concluded that the discrepancy must be due to inaccurate recording of net weight.[138] For the Preliminary Results, we noted that such differences do not demonstrate that one basis of measurement is any more accurate than the other.[139] Further, we explained that, although the Department did not find net quantity maintained by the NSO reliable in the third administrative review of the WBF order, we find the data reliable for the instant review because, as will be detailed below, we found none of the flaws and inconsistencies in the NSO's reporting of net quantity identified in the third review. Further, as explained above and also in the SV memorandum of the Preliminary Results, because Fairmont reports consumption on a net weight basis (which is normally the case in all antidumping responses), we find AUVs calculated on the same basis the only way to apply the full cost of import data maintained by the NSO.

The Coalition argues against the use of NSO net weight data, relying heavily on the Department's determination in the third administrative review of the instant order[140] and generally ignoring the Department's statements in the Preliminary Results However, we find the Coalition's arguments are misleading. In the third administrative review, the Department found anomalies in the NSO data because, for example, net and gross weight data varied significantly within one HTS category.[141] In making this determination, the Department specifically stated:

> [t]he extent of these anomalies is sufficient evidence that the Philippine NSO data are unreliable without the Department having to reach the question of what import data is regularly reported to Philippine authorities, or whether the Philippine NSO consistently applies a standard conversion factor to complete missing data fields.[142]

Thus, contrary to the Coalition's argument, the Department has never found that the NSO net weight data are unreliable as compared to gross weight data. In fact, there is no basis to

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138 See Fairmont's December 24, 2009 submission at 2 and 5.
139 See the Preliminary Results Analysis Memorandum at 2.
140 Fairmont did not address the use of NSO data in its case brief.
141 See 3rd WBF Review Final, Issues and Decision Memorandum at Comment 3.
142 See 3rd WBF Review Final, Issues and Decision Memorandum at Comment 3.

conclude that net data are less reliable given that the entry documents on which the NSO bases its import statistics have fields for importers to report both gross quantity and net quantity.[143]

Next, the Coalition argues that examining the HTS category and subcategory for wood and plywood imports demonstrate the unreliability of NSO net weight (i.e., "Quantity 2") data. The Coalition argues net and gross weight data under HTS subheading 4421.90.99 are the same for all but one country, despite the unit of measurement of gross quantities being kilograms and net quantity being pieces. The Coalition argues that it is impossible that there is a one-to-one relationship between kilograms and pieces which demonstrates that the net weight is not calculated or otherwise derived in an accurate or reliable manner. As an initial matter, we find that the Coalition does not support its assertion that net quantity is calculated or derived rather than reported. Second, the Coalition's confusion is caused by an apparent typographic error in which the unit of measure of net quantity was incorrectly stated as pieces when all of the underlying data for this field are measured in kilograms. HTS subheading 4421.90.99 consists of HTS categories further itemized at the 10-digit level and the units of measurement at the HTS 10-digit level for gross weight and net weight, except one, are gross weight in kilograms.[144] Because the units of measurement for gross weight and net weight are the same for HTS subheading 4421.90.99, the amounts of gross quantities (measured in kilograms) are the same as net quantities.

Second, the Coalition argues that net quantity must have been derived from the gross quantity reported because nearly all gross and net quantities of HTS heading 4421 differ by a constant factor of 0.848 kilograms per cubic decimeter. Even assuming that this demonstrates that the data for one of the quantities were derived, it does not demonstrate that it was the net quantity data. That is, this argument ignores the possibility that net quantity may have been reported and gross quantity may have been derived. Further, the mere fact that one of these fields could have been derived from another field does not demonstrate that either field is unreliable. Finally, the Coalition has raised no arguments that the net quantity amounts reported for HTS heading 4421 recorded by the NSO are inaccurate. Therefore, for the final results, we have determined to continue to use NSO data and to calculate the AUV of imports based on net quantity.

Comment 16: Shipment Basis for Valuing Inputs

In the Preliminary Results, consistent with Department practice,[145] the Department calculated SVs using Philippine import values on a CIF basis.[146]

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[143] See Petitioners' August 31, 2009, submission at Attachments 1 and 2.
[144] See Petitioners' July 20, 2009 submission at Attachment 1, Exhibit 2 (raw NSO data).
[145] See, e.g., Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007) and accompanying Issues and Decision Memorandum at Comment 4 (CVP 23 from China Final); see also Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Eighth New Shipper Review, 70 FR 42034, 42037 (July 21, 2005).
[146] See SVs Memorandum at 2.

- Fairmont argues that the Department should base SVs for delivered inputs on FOB import values (not CIF values), plus surrogate freight costs based on the distances between its domestic suppliers and its factories. Fairmont argues that an FOB value should be used because it procures inputs from domestic Chinese suppliers and does not pay ocean freight. Additionally, Fairmont notes that the distances from its suppliers to its factories are on the record, and were used to calculate the ME freight cost in the dumping margin calculation.
- Petitioners argue that Fairmont's argument contradicts the Department's established practice and that the Department recognizes that the CIF value is the equivalent of the domestic price of the input (at the port of arrival) in the Philippines.[147] Petitioners explain that the Department then separately captures the cost of domestic freight, either from the domestic supplier or from the Chinese port of entry, pursuant to the Sigma rule.[148, 149] In this review, Petitioners note that because the Department appropriately capped distances at the Sigma distance,[150] proper SVs are being assigned.

Department's Position:

We disagree with Fairmont. As an initial matter, the Department notes that Fairmont does not cite to any statutory, regulatory, administrative or judicial authority for its argument pertaining to freight.[151] Furthermore, to value these inputs, the Department is relying on import prices including the cost of all movement charges incurred in shipping the input to the surrogate country (i.e., CIF values) because this is the price that is most representative of a domestic price for the input in the surrogate country. The import statistics provided by countries commonly relied on for SVs, such as India and Indonesia, are inclusive of international freight. However, when the import statistics of some countries do not include such transportation costs, the Department has added SVs for international freight and foreign brokerage and handling charges to those import values to calculate the appropriate SV.[152]

While Fairmont is not arguing against the Department using import prices, it is arguing that we should not include the international transportation expenses associated with such imports. In essence, Fairmont is arguing that we apply a hybrid SV where we add to the FOB price of an import the transportation costs of a domestic purchase. The Department does not do this since it considers the CIF value to be equivalent to the domestic, undelivered price of the input. Instead, the Department values domestically sourced inputs using CIF values to which it adds an inland

[147] See CVP 23 from China Final, Issues and Decision Memorandum at Comment 4.
[148] See Sigma Corp. v. United States, 117 F.3d 1401 (Fed. Cir. 1997).
[149] See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Eighth New Shipper Review, 70 FR at 42037.
[150] See Preliminary Results, 75 FR at 5962.
[151] See Fairmont Case Brief Vol. 1 at 34.
[152] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 13.

freight cost calculated using distances established under the "Sigma Rule.[153] Therefore, for the final results, we have determined to value SVs, where applicable, based on CIF values.

Comment 17: Assessment Rates

In the Preliminary Results, for all Fairmont sales, the Department calculated ad valorem, rather than per-unit assessment rates.

- Petitioners note that for many sales Fairmont reported estimated rather than actual entered values. Petitioners cite to the first review of wooden bedroom furniture from the PRC in which the Department explained that its practice, when respondents report an estimated entered value, is to estimate the entered value using data from the margin program.[154]
- Petitioners next argue that the Department should apply per-unit assessment rates to all of Fairmont's CEP sales. Petitioners note that in the first administrative review in this proceeding, the Department explained that "where the respondent does not report the actual entered value for all sales associated with a particular importer in the 'entered value' field, we calculate the entered value using our margin calculation program to calculate a per-unit assessment rate for all sales associated with that importer."[155]
- No other party commented on this issue.

Department's Position:

We agree with Petitioners that where the respondent does not know the entered value of its merchandise, the Department's practice is to estimate the entered value based on the respondent's sales data[156] and we have done so in these final results. However, we disagree with Petitioners' position that per-unit assessment rates should be used in this review.

While at times, the Department has changed its assessment methodology from an ad valorem to a per-unit basis, generally this happened when there has been a difference between a respondent's entered value and its ultimate U.S. sales price, or a history of companies undervaluing their merchandise at entry.[157] No parties have made such claims here and Petitioners have raised no other reason why the Department's current practice in the wooden bedroom furniture proceeding

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[153] See Sigma Corp. v. United States, 24 CIT 97, 86 F. Supp. 2d 1344, 1349 (CIT 2000).
[154] See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China, 72 FR 46957 (August 22, 2007), and accompanying Issues and Decision Memorandum at Comment 36.
[155] See id.
[156] See id.
[157] See e.g., Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 7. See also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 6.

of assessing duties based on an ad valorem rate would result in less accurate assessment rates than if antidumping duties were assessed on a per-unit basis.[158] On the contrary, there is a very large variation in the per unit prices of Fairmont's sales of subject merchandise.[159] Thus, using per-unit (in this case, per-piece) assessment rates would result in assessing the same antidumping duties on merchandise that differs significantly in value. For example, the same antidumping duties would be assessed on a $5 side rail for a bed and a $2000 armoire. Therefore, we have not calculated per-unit assessment rates in the instant review.

Comment 18: Identification in the Customs Module

- Petitioners note that consistent with its collapsing determination,[160] the Department identified Fairmont in the Preliminary Results as "Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmount Designs Furniture Co., Ltd., and Meizhou Sunrise Furniture Co., Ltd."[161] and that this name is different than the grouping listed in the Federal Register notice initiating the administrative review where Fairmont is identified as Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., and Fairmont Designs.[162]
- Petitioners argue that in the final results and in the liquidation instructions, the Department should clarify that any entries of subject merchandise made by an importer that identified Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., and/or Fairmont Designs as the producer/exporter are subject to the Department's final margin determination.[163]
- Petitioners further argue that the Department also should clarify how the company is to be identified for cash deposit purposes in the CBP module, ensuring that appropriate cash deposits are collected on merchandise exported by any of the reviewed Fairmont companies.
- Petitioners also request that the Department conduct a search of the CBP entry data to confirm that all variations of the importer names used by FDUSA are captured in the liquidation instructions, thereby preventing entries from escaping liquidation at the proper assessment rates. Petitioners further request that the results of the CBP data inquiry should be released to parties under the administrative protective order.
- No other party commented on this issue.

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[158] Petitioners cite to a comment in the Issues and Decision Memorandum from the final results in the first administrative review of the wooden bedroom furniture order to argue that the Department has already calculated per unit assessment rates in this proceeding. See Petitioners' Case Brief at 66. This comment is incorrect. The Department did not calculate any per unit assessment rates in the first administrative review of this order.
[159] See Fairmont's October 15, 2009 submission at Exhibit FD-SE-3D-66-1.
[160] See memorandum to John M. Andersen regarding "Affiliation and Single Entity Status of Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmount Designs Furniture Co., Ltd., and Meizhou Sunrise Furniture Co., Ltd." dated October 8, 2009.
[161] See Preliminary Results, 75 FR at 5693.
[162] See Initiation of Antidumping Duty Administrative Review, 74 FR 8776, 8778 (February 26, 2009).
[163] Emphasis in the original.

Department's Position:

We agree with Petitioners' comment that the instructions should state that Fairmont's assessment rate should apply to companies "A, B, and/or C," rather than "A, B, and C." This change aside, we have not taken the steps suggested by Petitioners for the following reasons. First, the final margin calculated in this review for Fairmont applies only to shipments by the companies that were examined in this review as part of the collapsed entity. This entity includes Dongguan Sunrise Furniture Co., and Taicang Sunrise Wood Industry Co., Ltd., but not Shanghai Sunrise Furniture Co., Ltd. (a company that ceased operations before the POR)[164] or Fairmont Designs (the U.S. affiliated reseller).[165] Second, there is no need to clarify how the collapsed entity should be identified in the CBP module beyond simply listing the names of the companies that comprise the collapsed entity. Lastly, the importer names listed in the draft assessment instructions that were released to parties for comment are consistent with importers names on the record of this case, including the importer names on all entry documents examined at verification.[166] Thus, the verified information on the record indicates that Fairmont reported importer names accurately and there is no basis for also conducting the CBP search requested by Petitioners.

Comment 19: Combination Rates

Petitioners argue that the Department should apply exporter-producer combination rates in this proceeding rather than assigning an exporter's sales of merchandise produced by different manufacturers the same cash deposit rate and assessing importer-specific duties for an exporter rather than for an exporter-producer combination.

- Petitioners note that Department Policy Bulletin 05.1 acknowledges that combination rates are necessary to prevent firms from "funneling" exports through exporters with the lowest assigned cash-deposit rates and can be applied in reviews.
- According to Petitioners, the Department's regulations, policy, and practice allow for the imposition of combination rates in reviews. Petitioners contend that 19 CFR 351.107(b)(1) allows for the use of combination rates, and that the preamble to the Department's regulations states that the purpose of using such rates is to prevent foreign producers from manipulating their rates. Petitioners note that Department policy and practice in antidumping investigations and administrative reviews of imports from ME countries is to apply combination rates in appropriate cases.[167]

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[164] See Fairmont's May 26, 2009 submission at 14 and 15.
[165] As stated in the Federal Register notice of final results, the Department has rescinded the review with respect to Shanghai Sunrise Furniture Co., Ltd. and Fairmont Designs and removed these companies' names from the companies listed under Fairmont's rate in the CBP module. Reviews for these companies were initiated together with DGSR and TCSR. However, the Department later determined that Shanghai Sunrise Furniture Co., Ltd.[165] no longer existed and Fairmont Designs was not located in the PRC.
[166] See the FDUSA Verification Report at Exhibits 6 and 7; see also FDI Verification Report at Exhibit 4.
[167] See Notice of Amended Final Determination in Accordance With Court Decision of the Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Taiwan, 69 FR 67311 (November 17, 2004).

- Petitioners also cite to Pistachios from Iran where the Department stated that the need for combination rates was demonstrated because there were "several alternative producers" in Iran, and an exporter had the "ability and willingness . . . to change suppliers from one segment of th{e} proceeding to another as it sees fit."[168]
- Petitioners contend that like Pistachios from Iran the record of this review warrants the issuance of combination rates. Petitioners cite to an article published during the POR by Furniture Today that shows that factories with a high antidumping margin are shipping merchandise through factories that have a low antidumping margin.[169]
- Petitioners note that Shanghai Aosen's Q&V responses called into question whether this company could have produced the 2,222 containers it shipped to the United States during the POR.[170] Petitioners note that Shanghai Aosen reported that it produced only 300 containers of subject merchandise for all destinations during the 18 months of the first review period.[171] During the 12 months of this review period, however, Shanghai Aosen's U.S. shipments of subject merchandise were over seven times its total production from the first review period, which lasted 18 months.[172]
- Petitioners cite to business proprietary evidence that they assert demonstrates that companies with high cash deposit rates or no separate rates are obtaining invoices from Chinese exporters with low rates, which they use to ship wooden bedroom furniture to the United States at the lower rates.
- Petitioners have requested that in order to implement combination rates, the Department should issue a supplemental questionnaire to the separate-rates respondents requiring that they identify their suppliers in this review.
- No other party commented on this issue.

Department's Position:

For the final results, we have not exercised our discretion to apply combination rates in this case. The preamble to the Department's regulations states that "if sales to the United States are made through an NME trading company, we assign a non-combination rate to the trading company. . ."[173] As set forth in 19 CFR 351.107(b)(1), "{i}n the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a 'combination' cash deposit rate for each combination of the exporter and its supplying producers." In Pistachios from Iran, the Department exercised its discretion

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[168] See Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran, 70 FR 7470 (February 14, 2005) (Pistachios from Iran) and accompanying Issues and Decision Memorandum at Comment 2 (Pistachios from Iran I&D Memo).

[169] See Petitioners' July 6, 2009 submission at Attachment 5 ("Antidumping Group Asks For Transshipping Review," Furniture Today (August 8, 2008)).

[170] See Petitioners' May 29, 2009 Initial Deficiency Comments on Shanghai Aosen's Section A Questionnaire Response at 3. See also Shanghai Aosen's March 19, 2009 Quantity and Value submission (public version).

[171] See Petitioners' May 29, 2009 Initial Deficiency Comments on Shanghai Aosen's Section A Questionnaire at Attachment II of Exhibit 2.

[172] See Shanghai Aosen's March 19, 2009 Quantity and Value submission (public version).

[173] See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27303 (May 19, 1997).

and assigned a combination rate to the exporter and its supplier of the subject merchandise based on: (1) the similarity of the exporter's U.S. sale subject to the administrative review and the exporter's U.S. sale in the previous new shipper review in which a combination rate was applied; (2) the exporter's normal business practice of selling pistachios only to the U.S. market; (3) the exporter's ability to source the pistachios it sells from a large pool of suppliers; and (4) high cash deposit rates for other producers subject to the order and a high "all-others" rate.[174]

Contrary to Petitioners' argument, there is no record evidence concerning specific producer/exporters shifting their exports from high-margin to low-margin exporters, or that specific producer/exporters are otherwise manipulating or evading antidumping margins. As stated at Comment 33, we determined that the sales reported to CBP as Nanjing Nanmu sales were in fact produced and sold by Nanjing Nanmu after closely examining and verifying the sales. Accordingly, these sales do not demonstrate instances where sales were funneled from a high margin exporter to a low margin separate rate company. The two entries cited to by Petitioners not involving Nanjing Nanmu,[175] were made in a similar fashion to the Nanjing Nanmu sales and involved the same Chinese party that was involved in Nanjing Nanmu's sales. However, notwithstanding the Coalition's assertions, they have not provided any factual evidence to support a claim that these reflect an attempt to shift subject merchandise from high margin exporters to low margin separate rate companies.

Petitioners argue that Shanghai Aosen may have been involved in companies shifting their exports from high margin to low margin exporters based on Shanghai Aosen's purported production capacity. However, Petitioners' evidence does not establish conclusively that shipments were improperly reported as Shanghai Aosen's shipments. We also note that the Department has applied the PRC-wide rate of 216.01 percent to all shipments by Shanghai Aosen in these final results eliminating Shanghai Aosen's ability to enter merchandise at a low rate. Further, we find the assertions made in the Furniture Today article are simply too vague and therefore insufficient evidence for the purpose of imposing combination rates.

More generally, in deciding whether combination rates are warranted in a particular review, we look to the totality of circumstances. Here, the existing facts do not demonstrate that combination rates are warranted. While some parties that would be subject to high margins may ship merchandise through exporters with low margins, this fact alone does not warrant the application of combination rates in this review. In fact these producers may be exporting through other exporters for any number of legitimate business reasons, such as: (1) not having an export license; (2) having a previous relationship with these exporters; or (3) because the exporter lacked an adequate supply of merchandise and sourced from other suppliers. Petitioners have pointed to specific facts discussed in detail above, where a producer chooses to ship through different exporters, or an exporter chooses to source merchandise from multiple suppliers. However, as discussed above, such actions do not in and of themselves constitute improper use of cash deposits by a specific respondent or across all exporters. Further, for other

[174] See Pistachios from Iran I&D Memo at Comment 2.
[175] See Petitioners' Case Brief at 81-82.

reasons, we have applied high rates to Nanjing Nanmu and Shanghai Aosen, two of the parties alleged to have participated in such schemes. Additionally, in instances where companies are improperly misreporting their entries to CBP, that agency's fraud provisions remain an available avenue when applicable.

Comment 20: Duty Absorption with Regard to the Separate Rate Respondents

In the Preliminary Results, the Department found "that antidumping duties have been absorbed by Fairmont on all U.S. sales made through its affiliated importer." The Department, however, stated that it "do{es} not have the information necessary to assess whether the separate-rate respondents absorbed antidumping duties."

- Petitioners argue that the Department's conclusion concerning separate rate respondents fails to apply the Department's presumption that duties have been absorbed and erroneously fails to consider that the burden is on the respondent to show that it did not absorb antidumping duties.[176]
- Petitioners cite the Preliminary Results where the Department explained that in determining whether antidumping duties have been absorbed by the respondent, we presume the duties will be absorbed for those sales that have been made at less than NV.
- Petitioners note that none of the respondents in this review have provided evidence rebutting the Department's presumption. Consequently, in the final results, the Petitioners argue that the Department should make an affirmative finding of duty absorption for all respondents.
- No other party commented on this issue.

Department's Position:

In determining whether a respondent absorbed dumping duties, 19 CFR 351.213(j)(3) directs the Department to examine the dumping duties calculated for the respondent in the administrative review in which the absorption inquiry was requested. If dumping margins are found for an exporter who sells through a U.S. affiliate, it leads to the presumption that the U.S. affiliate may have decided to pay the dumping duties rather than eliminate the dumping, and thus absorb the duties. Given the Department's limited resources, it did not determine whether company-specific margins exist for the separate-rate respondents.[177] Therefore, there is no basis to presume that the separate-rate respondents absorbed duties. Moreover, the burden of proving that duties have not been absorbed shifts to the respondent only after the Department has calculated dumping margins for the respondent. Since the Department has only made separate-

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[176] See e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009), and accompanying Issues and Decision Memorandum at Comment 5C.

[177] See Memorandum to Abdelali Elouaradia, Director, Office 4 AD/CVD Operations, entitled, Respondent Selection in the Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China.

rate determinations for the separate-rate respondents, but did not determine company-specific margins, the burden to show that they have not absorbed duties has not shifted to them. Hence, there is no basis for making an affirmative finding of duty absorption for the separate-rate respondents.

Comment 21: Particle Board

To value Fairmont's particle board in the Preliminary Results, the Department relied on Philippine imports of HTS subheading 4410.31 as recorded by the Philippine NSO. HTS subheading 4410.31 consists of particle board and similar boards (for example, oriented strand board and wafer board) of wood on other ligneous materials, whether or not agglomerated with resins or other organic binding substances: unworked or not further worked than sanded.

- Fairmont argues that the Philippine imports under HTS subheading 4410.31 are an inappropriate SV because this subheading is over-inclusive as it includes particle board and other similar wooden boards (excluding oriented-strand board or waferboard) that is unworked or not further worked than sanded (unworked particle board).
- Fairmont also argues that Philippine imports under HTS subheading 4410.31 are aberrational as they only include imports from Japan which Fairmont contends are made according to a more stringent formaldehyde content level than particle boards used to make furniture.[178, 179]
- Fairmont contends that the Philippine NSO data are aberrational because of the low quantity of Philippine imports under HTS subheading 4410.31, the fact that the AUV is much higher than other reliable values on the record, and the fact that the data comes from just one country. Fairmont argues that the Department has recognized that an SV is aberrational on its face where, as here, the SV is based on a low overall quantity of imports that have a high per-unit value compared to other record data.[180] Fairmont asserts that the Philippine data is a fortiori inappropriate as a matter of law because Fairmont's own ME purchases of particle board for production of subject merchandise are of a greater quantity than Philippine imports under HTS subheading 4410.31 in 2007 and 2008 combined.[181] Fairmont contends that AUVs for both Indian and Thai unworked particle board imports are less than half of the Philippine AUV and that the price of its own ME purchases are less than a third of the Philippine AUV.[182]
- Fairmont notes that 2008 Philippine import data for HTS subheading 4410.31 do not include imports of furniture grade particle board or other unworked particle board from Thailand. Yet, Fairmont has placed on the record a bill of lading, and a commercial

[178] See Fairmont's January 25, 2010 submission at 142, 145, and 147.
[179] See id.
[180] See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and accompany Issues and Decision Memorandum, at Comment 2.
[181] See Fairmont's January 25, 2010 submission at 6, Exhibit 6.
[182] See Fairmont's March 4, 2010 submission, at Exhibit 1.A.

invoice, for a June 12, 2008 shipment to the Philippines of "Particle Board E2 Furniture Grade"[183] as well as Thai customs data showing that Thailand exported nearly 1.4 million kilograms of unworked particle board to the Philippines in 2008 – more than six times greater than the quantity from Japan.[184] Fairmont thus argues that Philippines NSO must have misclassified imports of furniture grade particle board from Thailand in another HTS category and that there is no way to tell how many more imports of furniture grade particle board were misclassified.

- Fairmont also argues that consumption of particle board in the Philippines is only a fraction of particle board consumption in Thailand.[185] Fairmont asserts that this suggests that Philippine furniture producers use other wood panel materials as opposed to particle board (e.g., plywood) and that this supports the conclusion that the Philippine import data are not appropriate for valuing Fairmont's particle board inputs.
- Fairmont argues that the Department should use its ME purchases to value particle board despite the fact that its ME purchases represent less than 33 percent of its total purchases of particle board. Fairmont argues that the Department's 2006 policy bulletin allows the Department to use a respondent's ME purchases to value NME purchases if case-specific facts argue for doing so.[186]
- Fairmont argues that its ME purchases are of sufficient size, are at prices comparable to the AUVs of other countries in the region, and are more specific to the input being valued than other surrogate sources as they are purchases of the input actually used in the production of subject merchandise. Fairmont further notes that the use of its ME purchases would also eliminate the need for converting between the unit of measure in the FOP database and the unit of measure in which the SV imports are measured.
- Fairmont also argues that if the Department does not use its ME purchases to value particle boards then it should use Thai import data under HTS subheading 4410.10.00.001.[187] Fairmont argues that Thailand is an appropriate secondary surrogate country because: (1) it is the largest producer and consumer of particle board of all the potential surrogate countries listed by the Department; (2) Thailand is a major producer of wooden furniture and consumes particle board in the production of wooden furniture;[188] and (3) Thai imports of particle board in 2008 are significant in quantity and are comparable in price to publically available domestic pricing data in Thailand.[189] Fairmont contends that if the Department does not utilize its ME purchases or Thai

[183] See Fairmont's March 4, 2010 submission at Exhibit 1.L.
[184] See Fairmont's March 4, 2010 submission at Exhibit 1.K. and 1.L.; see also Fairmont's January 25, 2010 submission at 7, Exhibit 8.
[185] See Fairmont's March 4, 2010 submission, at Exhibit 1.O.
[186] See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) (Antidumping Methodologies).
[187] The Department is not aware that any such 11-digit HTS subheading exists.
[188] See Fairmont's March 4, 2010 submission, at Exhibits 1.O., 1.J.
[189] See Fairmont's March 29, 2010 Resubmission of its March 17, 2010 SV Comments, at Exhibits 1 and 2; see Fairmont's March 4 submission, at Exhibit 1.N; see Petitioners' March 15, 2010 Submission at Attachment 4; see also Petitioners' March 4, 2010 Post-Preliminary SV submission at Attachments 1-6.

import data, then the Department should value particle board using 2008 Indian import data from HTS subheadings 4410.11.10 and 4410.31.10.[190]

- Petitioners argue that the Department correctly valued particle board using HTS subheading 4410.31. Petitioners argue that the burden rests entirely with Fairmont to provide the relevant information to demonstrate that the Philippine import data are aberrational[191] and that it has not done so.
- Petitioners further note that Fairmont fails to offer an alternative classification that would be more specific to its particle board input.
- Petitioners argue that the Department should not consider Fairmont's argument regarding the Philippines imports of particle board from Japan. Petitioners argue that the expertise and credentials of the people making the claims regarding Japans particle board[192] have not been established, and that Fairmont has not identified who they are, or why their opinions should be considered.
- Petitioners also argue that Fairmont's claim that 2008 import data for Philippine HTS 4410.31 does not include imports of furniture grade particle board or other unworked particle board from Thailand is without merit. Petitioners note that the shipping documents that were used as support for Fairmont's argument have relevant information blocked out and fail to specify a tariff classification number. Petitioners argue that import data are more reliable as they are compiled by customs officials who use the tariff classification, quantity, and value of the imported merchandise to determine customs duties and there are penalties on importers for misstating information on entry documents. Petitioners further argue that the timing differences between exports and imports and reporting differences between Thailand and the Philippines make it hard to judge one country's imports by another country's exports.[193]
- Petitioners further argue that they have demonstrated that Japanese plywood, in fact, is used in furniture production.[194]
- Petitioners also argue that Fairmont's ME purchases do not constitute the best available information for valuing particle board. Petitioners argue that the Department has a clearly established precedent of using SVs when ME purchases represent less than 33 percent of purchases. Petitioners further argue that the Department has a practice of not using ME purchases in situations where these purchases represent an insignificant quantity as their use might result in SVs that do not accurately represent the respondent's costs and this would allow parties to manipulate SVs.[195]

[190] See Fairmont's January 25, 2010 submission, at 7-9, and Exhibit 5, for a discussion showing that the Indian HTS category for unworked particle board changed during 2008.
[191] See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 6.
[192] See Fairmont's January 25, 2010 submission at Exhibit 17.
[193] See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008), and accompanying Issues and Decision Memorandum at Comment 9.
[194] See Petitioners' March 4, 2010 submission at Attachment 3.
[195] See Antidumping Methodologies, 71 FR at 61716-19. See Home Prods. Int'l Inc. v. United States, No. 07-00123, 2009 Ct. Intl. Trade LEXIS 151 (CIT 2009).

- Petitioners also claim that all Thai imports are from Malaysia and that the Malay particle board industry is subsidized. Petitioners explain that these subsidies explain the abnormally low prices of Thailand's imports from Malaysia. Petitioners further note that just because there is no Department countervailing duty against the Malay particle board industry does not mean that subsidies are not present.
- Petitioners also argue that Fairmont's ME prices are not comparable to other prices on the record[196] that are not subsidized.
- Petitioners further argue that Department should not value particle board using 2008 Indian import data from HTS subheadings 4410.11.10 and 4410.31.10[197] as Fairmont has not met its burden of showing the Philippine data are aberrational.[198] Petitioners contend that the Philippine data are reliable so it is not necessary to use information from another country.

Department's Position:

We have determined that the Philippine import data for HTS subheading 4410.31 are aberrational for the following reasons. All imports of HTS subheading 4410.31 during 2008 recorded in the NSO data came from Japan. While the fact that all Philippine imports came from Japan does not automatically render the import data aberrational, Fairmont has further made claims that Japanese particle board exports are of extraordinarily high quality and would not be used to manufacture furniture. The Department agrees with some of Petitioners' criticism of Fairmont's evidence (e.g., email correspondences with individuals whose credentials are not established). However, the high prices of the Japanese exports to the Philippines provide significant support to Fairmont's assertions of the high quality of these exports. The average unit price of Philippine HTS subheading 4410.31 is $594.29 per metric ton, which is significantly higher than the average imports prices of India's imports of plain particle board of $292.79 per metric ton, and Thailand's $179.03 per metric ton, and is also several times higher than Fairmont's market purchase prices of particle board.[199] The Department has established in past cases[200] that one approach to determining whether an AUV is aberrational is to compare the AUV of imports by the surrogate country with those of other potential surrogate countries, which in this review include Thailand and India. As described above, average Thai and Indian import prices are significantly lower than the price of Japanese exports to the Philippines.

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[196] See Fairmont's Surrogate Br. at II-Exhibit 1; see Fairmont's March 4, 2010 submission at Exhibit 1.A.
[197] See Fairmont's January 25, 2010 submission at 7-9 and Exhibit 5, for a discussion showing that the Indian HTS category for unworked particle board changed during 2008.
[198] See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 6.
[199] See the Preliminary Results Analysis Memo.
[200] See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

We further find the reliability of the Philippine import data for this HTS subheading is called into question by the fact that Thai customs records show exports to the Philippines of particle board of 1,396 metric tons in 2008, while Philippine import data for the same year only list imports of particle board from Japan of 219 metric tons. Further, the high Philippine import AUV is based on a small quantity of imports (219 metric tons) relative to the significantly lower AUVs on the record for particle board imports by India (31,030 metric tons), Thailand (2,022), and market purchases of particle board by Fairmont (817 metric tons). These inconsistencies demonstrate that the Philippines' import data for particle board are aberrational in this instance.

While we agree with Fairmont that Japanese exports to the Philippines of HTS subheading 4410.31 are aberrational, we do not agree with Fairmont that its ME purchases represent the best available information for valuing particle board because Fairmont's ME purchases represent less than a third of its total purchases. As noted by Fairmont, the Department has a practice of using SVs to value the domestically sourced input when ME purchases represent less than 33 percent of total purchases of that input.[201] The Department maintains this practice in an effort to ensure "that the ME price is representative of what the total price would have been had the firm purchased solely from the ME suppliers."[202] Thus, while we have based Fairmont's ME purchases on the actual prices paid, we have continued to base its NME purchases of particle board on other SVs.

The only remaining SVs for unworked particle board on this record are imports by India and Thailand. While the Department prefers to base SVs on data from the primary surrogate country, as stated above, no other suitable bases of SVs exist on the record. Therefore, we have based the SV for particle board on India's imports of plain particle board. India imports 15 times the quantity of plain particle board imported by Thailand and its imports are from many different countries, as opposed to Thailand's imports which all come from Malaysia. Further India is a suitable surrogate country for this segment of the proceeding for several reasons. As we stated above, India meets both statutory criteria for use as a surrogate country. India is at a comparable level of development to the PRC.[203] India is also a significant producer of identical or comparable merchandise.[204] The imports from India of HTS subheadings 4410.11.10 and

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[201] See Antidumping Methodologies, 71 FR at 61717-18. See Home Prods. Int'l Inc. v. United States, No. 07-00123, 2009 Ct. Intl. Trade LEXIS 151 (CIT 2009).
[202] See Antidumping Methodologies, 71 FR at 61717.
[203] See the April 24, 2009 Memorandum to Howard Smith from Kelly Parkhill Requesting for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China.
[204] See Fairmont's March 4, 2010 submission, at Exhibit 2.I (noting India's consumption of wood products to satisfy the demand of its wooden furniture industry). The Department has also in the prior administrative reviews considered India to be a significant producer of identical or comparable merchandise. See e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

4410.31[205] also are limited to plain particle board, as opposed to Philippines HTS subheading 4410.31, which contains types of particle board other than plain.

Comment 22: Brokerage and Handling

In the Preliminary Results, we calculated the SV for domestic brokerage and handling, using brokerage fees from the website of the Republic of the Philippines Tariff Commission (Philippine Tariff Commission).

- Petitioners argue that the Department incorrectly based the SV for brokerage and handling on the Philippine Tariff Commission data because these data do not include handling expenses, which the Department is required to account for in the SV calculation. Petitioners add that this fact is not disputed by Fairmont. Petitioners argue that the Department should rely on a survey released by the World Bank Group, entitled "Trading Across Borders" (Doing Business in the Philippines) to value brokerage and handling. Petitioners argue that the Doing Business in the Philippines data are publicly available, represent a broad range of prices, are obtained through a survey conducted in accordance to a rigorous methodology, and are contemporaneous with the POR. Petitioners also argue that the Doing Business in the Philippines data is superior to the separate handling information provided by Fairmont because the price quotes submitted by Fairmont are not publicly available information, they do not represent "country-wide" data, and there is no way to tell if they have been self selected from a broader range of available prices.[206]
- Fairmont argues that the Doing Business in the Philippines data submitted by Petitioners are aberrationally high, unreliable, and do not accurately represent its experiences. Fairmont argues that the Department should continue to rely exclusively on the Philippine Tariff Commission data that the Department used to value brokerage and handling in the Preliminary Results.
- Fairmont states that it does not object to using the Philippine Tariff Commission data applied as brokerage and handling in the Preliminary Results. However, Fairmont claims that there were errors in the calculation.
- However, Fairmont acknowledges that the Philippine Tariff Commission data do not provide handling charges. Thus Fairmont argues that if the Department decides not to solely rely on the Philippine Tariff Commission data, it should use the Indian brokerage

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[205] As noted by Fairmont, Indian HTS 4410.31 was changed to 4410.11.10, but there was a period during the POR where imports entered under both HTS subheadings. This situation ended in April 2008. See Fairmont's January 25, 2010 submission at Exhibit 5-11.

[206] Petitioners also argue that the Department should not use handling data from the Port of Illigan schedule submitted by Fairmont in its March 4, 2010 SV submission at Exhibit 6F. As an initial matter, the Department notes that Fairmont has not argued in its case and rebuttal brief for the Department to use this information. Further, the Department agrees with Petitioners that this information is not the best available information because as Petitioners note, the Port of Illigan handles only domestic, non-containerized shipments (Fairmont has stated throughout its responses that it ships using containers. See e.g., Fairmont's June 12, 2009 Section C Questionnaire Response at C-27). Further, this data is narrow as it comes from one small port.

and handling expenses that it placed on the record and that have been used in other antidumping proceedings.[207] Fairmont argues that Indian data better represent the costs of an exporter in the PRC as export costs in the Philippines are higher than in other places in the region, including, the PRC, Singapore, and Thailand.[208]

- Fairmont argues that if the Department determines not to rely on either the Philippine Tariff Commission data, because they lack handling charges, or the Indian brokerage and handling expenses, the Department should still utilize the Philippine Tariff Commission data to value brokerage charges and then add handling charges based on rate quotes and an invoice containing brokerage and handling charges that Fairmont obtained from Philippine brokerage companies.[209]
- Fairmont argues that the Philippine price quotes it provided are just as publicly available as the Doing Business in the Philippines data submitted by Petitioners, more representative of actual prices and country-wide data, more transparent, and more specific to Fairmont's shipping expenses.
- Fairmont also argues that in the event the Department does not find its price quotes to be reliable for calculating handling expenses, the Department should independently research publicly available sources in the Philippines for handling charges.
- Fairmont argues that Doing Business in the Philippines data have several limitations which are openly acknowledged on the Doing Business in the Philippines website.[210] These limitations include: (1) the data only refer to the costs of exporting from the largest city (i.e., Manila) and thus may not be representative of other areas; (2) the brokerage and handling charges are for "dry-cargo 20-foot, full container load{s}" while Fairmont uses a 40-foot full containerized load, which would have different handling charges; (3) Doing Business in the Philippines is only for firms structured as limited liability companies; (4) according to the Doing Business in the Philippines' website, "the transactions described in a standardized case scenario refer to a specific set of issues and may not represent the full set of issues a business encounters;" and (5) for costs that involve an element of time, Doing Business in the Philippines consultants use an "an element of judgment" and then take the median value if multiple estimates were used.
- Fairmont contends that while all of the Doing Business in the Philippines reports for all countries surveyed included a total of 6700 contributors, the report for brokerage and handling in the Philippines only included information from six contributors consisting of private freight forwarders and or customs brokers.[211] Fairmont also argues that the Doing Business in the Philippines data do not include any information from the Philippine Ports Authority or any related entities or officials. Fairmont believes the port authority is the only entity that regulates handling costs and that would maintain a broad range of price information.

[207] See Fairmont's December 10, 2009 submission at Exhibit 3.
[208] See Petitioners' June 20, 2009 submission at Attachment 7.
[209] See Fairmont's March 4, 2010 submission at Exhibits 6C, 6D, and 6E.
[210] See Fairmont's December 24, 2009 submission at Exhibit 4.
[211] See id. at Exhibit 6.

- Fairmont also argues that Doing Business in the Philippines does not explain the methodology used to convert the different fees to a per container basis, such as brokerage, export documentation, and handling fees. Fairmont notes that while Doing Business in the Philippines reports each of these fees in the same unit of measurement, it does not explain the assumptions used in its methodology to calculate the per-unit cost.
- Fairmont contends that there was no incentive for firms to report competitive prices to the compilers of Doing Business in the Philippines. Instead Fairmont argues that these firms had incentives to distort the prices upwards as reporting competitive prices would undercut the market.
- Fairmont also argues that Doing Business in the Philippines data are reported in U.S. dollars while most Philippine brokerage and handling charges are originally reported in Philippine Pesos. Fairmont argues that the Department has a preference for using the currency rates reported on its website to convert foreign currency to U.S. dollars.[212]
- Fairmont argues that the Philippine Tariff Commission data represent the maximum amount that can be charged for brokerage fees in the Philippines. Fairmont contends that the Doing Business in the Philippines data are likely higher because the compilers of this report assume a shipment value significantly less than that experienced by Fairmont and this results in a higher brokerage expenses ratio.
- Fairmont also argues that the Department should not include export documentation fees in the calculation of brokerage and handling as they are de minimis. Fairmont states that Department's regulations quantify an insignificant adjustment under section 777A(a)(2) of the Act as any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the EP, CEP, or NV, as the case may be.[213]
- Petitioners argue that the Doing Business in the Philippines data are superior to the separate handling quotes and invoices gathered by Fairmont. Petitioners argue that the Department has an established practice of not relying on price quotes.[214] Petitioners further argue that the Department "looks for surrogate values that are representative of a range of prices in effect during the POR and information that includes numerous transactions," and it "avoids using single-source information and prefers country-wide information."[215] Petitioners also argue that the price quotations and invoice values submitted by Fairmont are not publicly available information, they do not represent "country-wide" data, and there is no way to tell if they have been self selected from a broader range of available prices.

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[212] See Foreign Currency Exchange Rates, Import Administration, available at http://ia.ita.doc.gov/exchange/index.html.
[213] See 19 CFR 351.413.
[214] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 7 (while Petitioners did not specify, it appears they are citing to Comment 7).
[215] See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406 (July 13, 2009) and accompanying Issues and Decision Memorandum at Comment 4 (while Petitioners did not specify, the quote is from Comment 4).

- Petitioners further argue that there is no record evidence showing that Fairmont ships exclusively in forty foot containers and the fact that the Doing Business in the Philippines data is reported on a fully loaded twenty foot container basis is not an issue as this volume is easily converted to a per-cubic foot basis. This price per-cubic foot can then be applied to Fairmont's subject merchandise sales quantities which Fairmont has reported on a cubic foot basis.
- Petitioners argue that the Indian brokerage and handling rates do not better represent the cost of a wooden bedroom furniture producer in the PRC simply because handling costs in the Philippines are much higher than in other potential surrogate countries, like Thailand and India.[216] Petitioners further argue that the Department should not use the Indian brokerage and handling rates as the Department's practice is not to cherry-pick the lowest possible SV for each input from the list of potential surrogate countries. Petitioners further argue that the Department "normally will value all factors in a single surrogate country."[217]

Department's Position:

Whether to Use the Doing Business in the Philippines Report

We agree with Petitioners that the Department is required to account for all expenses "incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." See section 772(c)(2)(A) of the Act. We also agree with Petitioners and Fairmont that the data on which we relied in the Preliminary Results only related to brokerage expenses. Given this, for the final results, we have valued Fairmont's brokerage and handling expenses using data from the Doing Business in the Philippines report. This report contains both brokerage and handling charges. Further, the data are published by the World Bank, which the Department has found to be a reputable source of such data.[218] Further these data are publicly available, contemporaneous, specific to the costs in question, and are tax exclusive which meet the Department's criteria in determining the best available information for valuing FOP.[219] Fairmont itself has placed these same Doing Business World Bank reports on the record, albeit reports concerning India, as potential SV information for brokerage and handling.[220] The Department recently used Doing Business in India data as the SV for brokerage

[216] See Fairmont's Surrogate Br. at II-48.
[217] See 19 CFR 351.408(c)(2).
[218] The Department has found the World Bank to be "a reputable intergovernmental organization with reliable data collection methods." See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 13239 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 3.
[219] See e.g., First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3(c) and (g).
[220] See Fairmont's December 10, 2009 submission at Exhibit 2.

and handling in the Helical Washers from China Final.[221] The Department notes that these Doing Business in India data are generated by the World Bank using the same methodology as the Doing Business in the Philippines data.[222] Similar to Helical Washers from China Final, we find the World Bank's Doing Business survey a reliable source for valuing brokerage and handling charges. In selecting Doing Business in the Philippines as the best available information, the Department notes that Fairmont has identified some weakness in the data. However, as discussed below, these weaknesses are outweighed by the strengths of the Doing Business in the Philippines data and the more significant weaknesses in the data which Fairmont proposes.

With regard to Fairmont's assertion that the Doing Business in the Philippines data are aberrationally high, the fact that these data are higher than the data which Fairmont purposes does not mean the data are necessarily aberrational. As stated previously, the existence of a high price is not sufficient to exclude a particular SV.[223] Rather, the Department applies a test to determine whether a value is abnormal or by comparing the prices of what is purported to be aberrational with SVs from other potential surrogate countries. The only information on this record from other country candidates are two submissions by Fairmont for India – one from the same survey as the World Bank's Doing Business in Philippines called Doing Business in India,[224] which the Department now relies on as the SV when India is the surrogate country,[225] and the other value is the average of the brokerage and handling costs reported by Navneet Publications (India) Ltd. (Navneet), Essar Steel Limited, and Himalya International Ltd. in prior India antidumping duty cases.[226] The per-volume cost of brokerage and handling of Doing Business in the Philippines data[227] are less than the cost of the World Bank's Doing Business in India data placed on the record by Fairmont[228] Further, the Doing Business in the Philippines data are in line with the charges for Navneet,[229] which is the only contemporary data among the

[221] See Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 29720 (May 27, 2010) (Helical Washers from China Final) and accompanying Issues and Decision Memorandum at Comment 6.
[222] See Petitioners' July 20, 2009 submission at Exhibit 9. This exhibit includes the Doing Business methodology section that was originally included by Petitioners with their submission of the Doing Business in the Philippines data. We note that this section refers to its methodology as simply Doing Business and does not identify the methodology as being specific to particular countries.
[223] See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1.
[224] See Fairmont's December 10, 2009 submission at Exhibit 2. Fairmont has argued that this SV, too, is aberrational.
[225] See e.g., Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Results of the 2008-2009 Antidumping Duty Administrative Review, 75 FR 27308, 27311 (May 14, 2010).
[226] See Fairmont's December 10, 2009 submission at Exhibit 2 and 3.
[227] See Petitioners' July 20, 2009 submission at Attachment 9 and their recalculation of this brokerage and handling rate in their August 11, 2009 submission at Attachment 7.
[228] See Fairmont's December 10, 2009 submission at Exhibit 2. Fairmont has argued that this SV, too, is aberrational.
[229] See Fairmont's December 10, 2009 submission at Exhibit 2 where it calculated a per kilogram brokerage and handling charge for Navnett of $0.020 versus $0.029 cost of the Doing Business in the Philippines survey.

three companies' brokerage and handling charges cited by Fairmont, and also the only brokerage and handling rate of the three that included separate charges for brokerage and handling. Thus, we do not find that Fairmont has demonstrated that the Doing Business in the Philippines data to be aberrationally high. Further, the brokerage and handling charges from India cited to by Fairmont are similar in price to the Doing Business in the Philippines data and contradict the article cited to by Fairmont that Philippine brokerage and handling charges are higher than other places in Asia.

Fairmont asserts that the SV for brokerage and handling charges based on Doing Business in the Philippines data are more than two and a half times the SV used in the Preliminary Results, and asserts that the reason for this may be because the World Bank calculates the per container charge assuming a shipment value significantly less than that experienced by Fairmont. However, Fairmont has provided nothing in support of this assertion. Additionally, we note that the SV used in the Preliminary Results only included brokerage charges,[230] which Fairmont has acknowledged to be the case,[231] whereas the SV derived from Doing Business in the Philippines includes both brokerage and handling charges.

Fairmont has also argued that the fact that it ships in 40-foot containers renders the Doing Business in the Philippines data less applicable because they are based on prices corresponding to 20-foot containers. Further, Fairmont notes that its price quotes are for 40-foot containers. Nonetheless, the Doing Business in the Philippines data are calculated on a per-square foot basis and Fairmont has not supported its argument with any evidence that the per-square foot brokerage and handling cost of a 20-foot container would differ from that of a 40-foot container. We also note that Fairmont has included the volume of its shipments in cubic feet in the ("QTYCUVM") field. Thus, we are able to apply the Doing Business in the Philippines rate through a simple conversion. Furthermore, we note that Fairmont has agreed that it would be distortive to apply brokerage and handling charges on an ad valorem basis because it is impossible to determine accurately, from the Section C database, the appropriate EP to which those charges should be applied.[232] Additionally, we note that the Doing Business in India data placed on the record by Fairmont as a basis for comparison are also based on 20-foot container costs.

Fairmont has argued that the Doing Business in the Philippines survey does not identify how the per container costs for different types of charges were calculated. However, in addition to stating its general data collection methodology, the survey clearly states that it is based on actual contracts and that all documents necessary for export were recorded, including, in addition to the contracts, bank documents, customs declaration forms, and clearance documents. Further, Fairmont has not identified any errors by the World Bank in calculating the brokerage and handling charges. Fairmont has listed what it believes to be other shortcomings of the Doing Business in the Philippines data, stating: (1) that they only come from limited liability

[230] See the Preliminary Results SV Memo.
[231] See Fairmont's Case Brief, Volume II, at 36.
[232] See Fairmont Br. at I-45.

companies; (2) when multiple estimates are used, Doing Business in the Philippines uses median values rather than average values; (3) Fairmont cites Doing Business in the Philippines as stating that "the transactions described in a standardized case scenario refer to a specific set of issues and may not represent the full set of issues a business encounters;"[233] (4) that for costs that involve an element of time, Doing Business in the Philippines consultants use an "an element of judgment" and then take the median value if multiple estimates were used; and (5) Fairmont claims that the Doing Business in the Philippines data do not include any information from the Philippine Ports Authority. While these aspects of the data may not be ideal, Fairmont has failed to demonstrate that these aspects render the data inaccurate. As stated above, the Department has found the World Bank to be a credible source for such data and despite these possible weaknesses, the Doing Business in the Philippines data is, on balance, the best available information.

Fairmont argues that the Department has a preference for using the currency rates reported on its website and that this preference is thwarted by the fact that the Doing Business in the Philippines data are reported in U.S. dollars. Fairmont asserts that most Philippine brokerage and handling charges are originally reported in Philippine pesos and thus the World Bank, in compiling its survey, must have converted the charges in Philippine pesos into U.S. dollars. While Fairmont is correct that the Department normally relies on the exchange rates available at the Department's website, Fairmont has provided no evidence that the brokerage and handling charges were not originally denominated in U.S. dollars. Freight forwarders providing brokerage and handling and ocean freight services may receive payment in dollars, even, for example, if they are located in the PRC.[234] Even if the brokerage and handling charges were originally denominated in Philippine pesos, the fact that the World Bank did not necessarily use the exchange rates maintained on the Department's website does not outweigh all of the reasons listed above which the Department has determined make the Doing Business in the Philippines data the best available information on the record for valuing brokerage and handling services. Fairmont also argues that the firms providing data to Doing Business have an incentive to provide inflated prices as a way to protect its own market. However, Fairmont has not provided any evidence that firms submit inflated prices to Doing Business.

Use of Brokerage and Handling from Indian Antidumping Cases

Fairmont has argued that the Department should use brokerage and handling rates from verified respondents in Indian antidumping cases if it is concerned that the Philippine Tariff Commission is not an appropriate SV because it does not include handling costs.[235] Fairmont also argues that Indian data better represent the costs of an exporter in the PRC as export costs in the Philippines

[233] See Fairmont's December 24, 2009 submission at Exhibit 4.
[234] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 12.
[235] See Fairmont's December 10, 2009 Comments, at Exhibit 3.

are higher than in other places in the region, including, the PRC, Singapore and Thailand.[236] However, as stated above, the brokerage and handling charges from the World Bank surveys of the Philippines and India are nearly identical, and, as stated above, the cost of the one data source from India previously relied on by the Department prior to the release of the World Bank report that explicitly included both brokerage and handling charges is similar to the cost derived from the Doing Business in the Philippines data. Thus, we do not agree that the brokerage and handling charges in the Philippines are far higher than those in India. Furthermore, the Department normally does not use data from an alternative surrogate country when reliable data from the primary surrogate country are available.[237]

Use of a Hybrid Approach

Fairmont has also argued that the Department could continue to use the data from the Philippine Tariff Commission to value brokerage fees and value handling charges using price quotes from Philippine brokerage companies. Fairmont submitted three different Philippine prices for valuing handling charges consisting of: (1) the price from an invoice from Associated Freight Consolidators, Inc.; (2) a price quote from Fast-Tract Freight, Inc.; and (3) a price quote from GAAC Customs Brokerage Services. However, the Department has stated that "our general practice is to not use price quote information if other publicly available data is on the record, because {quotes} do not represent actual prices or broad ranges of data, and the Department does not know the conditions under which these were solicited and whether or not these were self-selected from a broader range of quotes."[238] In addition, contrary to Fairmont's arguments, its price quotes are not published publicly as opposed to the Doing Business in the Philippines survey published by the World Bank, which is widely available. We further note that Fairmont itself expresses concern over the accuracy of adding its price quotes to brokerage charges used in the Preliminary Results, because they are calculated based on different units of measurement.[239]

Fairmont also argues that its price quotes are more representative of a national average as they represent a wider geographic range (i.e., Manila, Cebu, and Cavite) than the Doing Business in the Philippines data which only cover the Manila metro region. While the Department has a preference for nation-wide data, we note that according to statistics published by the Philippine Ports Authority, 86 percent of containers exported during 2008 from the Philippines originated from the Manila ports, which are Manila South Harbor and the Manila International Container

[236] See Petitioners' July 20, 2009 submission (we believe Fairmont incorrectly identified the date of this submission as "June 20, 2009") at Attachment 7.
[237] See 19 CFR 351.408(c)(2); Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comments 5A and 5D; see Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 2.
[238] See e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 7.
[239] See Fairmont's Case Brief, Volume II, at 43.

Terminal.[240] We further note that the Doing Business in the Philippines data are based on six sources rather than Fairmont's three, and thus represent a broader range of data sources.

Use of Other Suggested SVs

Fairmont contends that if the Department does not find Fairmont's price quotes to be reliable for calculating handling costs, the Department should independently research publicly available sources in the Philippines for handling charges. However, for the reasons discussed throughout this comment, the Department has determined that there is no need to do additional research as the Doing Business in the Philippines data are appropriate data to use to value brokerage and handling expenses. Further, as demonstrated in the itemization of the brokerage and handling charges in the Doing Business in India, Doing Business in the Philippines, and Navneet brokerage and handling charges, handling charges represent nearly half of the combined brokerage and handling charges and thus should not be simply overlooked as suggested by Fairmont.[241]

Fairmont also argues that the Department should not include export documentation fees in the calculation of brokerage and handling expenses as they are de minimis. The Department analyzes whether an adjustment is de minimis at the level of the overall adjustment. The Department does not analyze whether component parts of an adjustment are de minimis. Because the overall brokerage and handling adjustment is not de minimis, it is properly included within Fairmont's margin calculation. Therefore, for the final results, we have based brokerage and handling charges on the World Bank's Doing Business in the Philippines Report.

Comment 23: Veneered Boards

In the Preliminary Results, the Department calculated the SVs for veneered board inputs based on the underlying FOPs used by the toller to make the veneered boards.

- Fairmont argues that the Department should value its veneered board inputs using a finished veneered board FOP instead of the intermediate inputs used by the toller to make these boards. Fairmont argues that this is the most appropriate methodology when taking into account section 773(c)(1) of the Act.[242]
- Fairmont notes that its originally reported finished veered board FOP amounts contained errors and that it has tried to correct the errors, but that the Department incorrectly rejected the resubmissions as being untimely. Therefore, Fairmount urges the

[240] See Petitioners' March 15, 2010 submission at Exhibit 13.
[241] See Fairmont's Case Brief, Volume II, at 2 (arguing that the Department should use Customs Administrative Order No. 01-2001 to value brokerage and handling notwithstanding the fact that these data do not contain handling costs).
[242] See Department Antidumping Duty Manual, Ch. 10 at 26-29 (discussing use of intermediate inputs); see also Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment 2.

Department to reconsider its decision to reject these data and to rely on this FOP dataset for the final results.

- If the Department does accept its reported consumption of finished veneered boards, then Fairmont states that it should remove from the reported FOPs those inputs reported as consumed by the tollers producing veneered boards.
- Petitioners argue that the Department properly valued Fairmont's veneered boards in the Preliminary Results.
- Petitioners argue that Fairmont's questionnaire responses do not fully explain the extent to which Fairmont purchased veneered boards directly from suppliers. Instead, Petitioners argue that Fairmont reported that its production affiliates (TCSR and DGSR) either produced their own veneered board or provided "tollers" with materials to produce veneered boards in nearly all, if not all, instances. Therefore, Petitioners argue that if Fairmont did purchase veneered boards, these purchases were minimal and to the extent Fairmont did not make its own veneered boards, it principally relied on tollers.
- Petitioners also argue that Fairmont's FOP database already includes all of the upstream factors (materials, labor, and energy) that were used by its tollers to produce the veneered boards used by Fairmont. Petitioners argue the use of this FOP file is in accordance with the Department's mandate of using the best available information when parties suggest that intermediate inputs are being used.[243,244]
- Petitioners further argue that the use of an SV for veneered boards would be inaccurate because, as even Fairmont has acknowledged, "the cost of the veneered boards in question varies by the different species of wood veneer used."[245] Petitioners argue that for this reason, Fairmont has been unable to demonstrate that any veneered board SV will accurately capture: (1) the differences among the various types of veneers and other factors used by the tollers; or (2) the services Fairmont purchased from its tollers.
- Petitioners also argue that because Fairmont's alternative FOP database, which includes veneered boards, was untimely filed, any corrections to this file would be unreliable. Petitioners note that on November 23, 2009, Fairmont requested that the Department allow it to untimely submit a corrected version of this veneered board database under the argument that the Department had not properly informed them of their original reporting error. Petitioners argue that the CIT has consistently found that respondents are responsible for creating an accurate administrative record[246] and that the CIT has affirmed Department decisions to reject factual information that has been submitted after the deadline for new factual information.[247]

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[243] See Honey from the People's Republic of China: Final Results and Rescission, In Part, of Antidumping Duty New Shipper Reviews, 72 FR 37713 (July 11, 2007).
[244] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 29.
[245] See Fairmont's August 12, 2009 submission at SD-40.
[246] See NSK Ltd. and NSK Corporation, et al. v. United States, 346 F. Supp. 2d 1312 (CIT 2004); see also Tianjin Machinery Import & Export Corp. v. United States, 806 F. Supp. 1008, 1015 (CIT 1992); see also Chinsung Indus. Co., Ltd. v. United States, 705 F. Supp. 598, 601 (CIT 1989).
[247] See Yantai Timken Co. v. United States, 521 F. Supp. 2d 1356, 1370-71 (CIT 2007).

- Petitioners further argue that Fairmont's characterization of their proposed corrections as being a way to fix "clerical errors" is also inaccurate as Petitioners believe these corrections are a way to retroactively cure Fairmont's original abandonment of the data. Petitioners also argue that pursuant to section 782(i) of the Act, the Department does not rely on unverified data, and as a result of Fairmont's own actions the Department was unable to verify Fairmont's proposed veneered board database.
- Petitioners also believe Fairmont's argument that the Department should accept the FOPs for finished boards and remove the FOPs of the tollers should be rejected for the following reasons: (1) the Department already has recognized that the most accurate way to calculate the margins of a respondent that hires veneered board tollers is to value the actual materials, labor, and energy inputs used by those tollers; (2) the ratios that Fairmont proposes to remove the tollers inputs from the reported FOPs are based on the database that was submitted October 1, 2009 and as previously discussed was abandoned by Fairmont; (3) the ratios are nothing more than an attempt to manipulate the accurately reported FOPs in the master FOP file to reflect Fairmont's "newly created factors" (i.e., "veneer + board species");[248] (4) the application of these ratios do not take into consideration differences between tollers; and (5) Fairmont's suggestion of applying the ratios to factor fields with the suffixes "B" and "C" would also inappropriately pertain to bon feet and curve panels.

Department's Position:

The Department has specified those circumstances in which it would apply an SV to an intermediate input (i.e., the finished tolled input): 1) when the intermediate input accounts for an insignificant share of total output, and the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all of the parties to the proceeding; or 2) when valuing the factors used in a production process yielding an intermediate product may lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup.[249] Veneered board is widely used as an input by Fairmont and thus does not account for an insignificant share of total output. Further, no party has identified an instance where valuing the factors used in a production process yielding veneered boards would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup.[250] As noted by Petitioners, the Department has valued bon feet and veneered

[248] See Fairmont's October 1, 2009 submission at 1.
[249] See Honey from the People's Republic of China: Final Results and Rescission, In Part, of Antidumping Duty New Shipper Reviews, 72 FR 37713 (July 11, 2007) and accompanying Issues and Decision Memorandum at Comment 2; Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 1.
[250] See Fairmont's submitted FOP database from the Preliminary Results Analysis Memo.

boards in the second review of this proceeding based on the FOPs of the tollers.[251] Further demonstrating that the Department does consider using the FOPs of tollers, the Department's questionnaire specifically informs all parties that they should be ready to provide the FOPs of tollers.[252]

Further, Fairmont has not disputed the Department's reliance on the toller FOPs to calculate the NV of bon feet and curve panel inputs. In fact, Fairmont did not want the Department to calculate an SV for these intermediate inputs as demonstrated by the fact that it never provided or offered to provide the consumption of finished bon feet and curve panels supplied by tollers. Despite the Department's practice in earlier reviews of relying on the tollers FOPs and despite Fairmont's apparent attempt to possibly cherry pick by submitting only the tolling FOPs of bon feet and curve panels, and the consumption FOPs for veneered board, the Department never rejected or ruled against Fairmont's submission of FOPs of veneered board based on the consumption of finished veneered boards just prior to verification.[253] Fairmont noted soon thereafter that its submitted consumption figures of finished veneered board were inaccurate[254] and, as discussed further below, the Department provided Fairmount with an opportunity to provide these revised data at verification. However, despite Fairmount's assertion that it would provide this information, it failed to provide revised consumption data for finished veneer board by the end of verification. Thus, the only FOPs on the record for finished tolled inputs were acknowledged by Fairmont to be inaccurate. Thus, for all these reasons, for the final results, we continue to rely on the FOPs used in the production process for veneered boards.

As far as Fairmont's attempts to portray the Department as inflexibly denying Fairmont the opportunity to provide the FOPs of its finished veneer board consumption, this conclusion is unsupported by the facts in this case. Fairmont, for the first time submitted FOP data regarding its consumption of the finished veneered boards and identified the HTS subheading of veneered boards in its October 2, 2009 submission, only three weeks prior to verification. However, by Fairmont's own admission, the submitted data in this submission was inaccurate for not only the material consumption, but also the energy and labor FOPs.[255] At verification, Fairmont stated that it intended to correct these data. However, despite Fairmount's assertion that it would provide this information, it failed to provide revised FOP data by the end of verification.[256] Prior to and at verification, the Department accepted corrections from Fairmont and incorporated these changes into the Preliminary Results.[257] The Department's acceptance of these corrections demonstrates that Fairmont had ample opportunity to provide revised FOP data to the

[251] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 29.
[252] See the Department's April 20, 2010 questionnaire at A-8.
[253] See Fairmont's October 1, 2009 submission.
[254] See Fairmont's October 26, 2009 submission of minor corrections.
[255] See id.
[256] See the TCSR Verification Report at 5.
[257] See Fairmont's October 5, 2009, October 15, 2009, and October 21, 2009, supplemental responses, and Preliminary Results Analysis Memo wherein we incorporate all minor corrections provided at verification.

Department prior to or during verification. In this regard, Fairmont was aware that the Department required information regarding veneer board consumption from the time it volunteered to be a mandatory respondent, which was nearly nine months prior to verification and the Department provided Fairmont with substantial time prior to and during verification to provide corrections. However, despite Fairmont's assurances to that it would provide such corrections, Fairmont did not provide the Department with the revised data at verification.[258] Under these circumstances, the Department was under no obligation to provide Fairmont with further opportunities to submit the information, particularly after verification, when the Department would no longer have the opportunity to verify the accuracy of such information.

Fairmont attempted to submit revised FOP data for its board consumption after verification. However, as noted in the Department's letter rejecting this untimely data ,[259] 19 CFR 351.301(b)(2) provides that factual information must be filed no later than 140 days after the last day of the anniversary month, which, in this case, was June 20, 2009. In addition, 19 CFR 351.302(d)(1)(i) provides that the Department will not consider or retain in the official record untimely filed factual information, written argument or other material that is untimely filed. In addition, the Department must maintain control over the administrative process to ensure the proper administration of the antidumping law. In this regard, the deadline for submission of factual data falls prior to verification so that the Department may subject any of the submitted data to verification. Here, Fairmont tried to submit the data after verification. However, the Department rejected the information because such information would not be verified as verification was already conducted.

Fairmont characterizes the revisions to its FOP data as corrections of clerical errors.[260] The Department disagrees. Clerical errors are errors in writing or copying.[261] The "corrections" Fairmont attempted to submit after verification would require substantial revision to Fairmont's previously submitted FOP data. Even assuming arguendo that the quick and admittedly incomplete adjustment[262] argued for by Fairmont were the only necessary "corrections" to the data, these "corrections" would require adjusting as many as 60 different inputs for hundreds of control numbers. [263] These are more inputs and control numbers than the FOP database of most respondents to antidumping proceedings. Thus, we find these revisions to the data to be more substantive than mere corrections to a clerical error.

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[258] See TCSR Verification Report at 3-5.
[259] See e.g., the Department's January 13, 2010 letter to Fairmont regarding New Factual Information Contained in January 12, 2010, Submissions.
[260] See Fairmont's Case Brief, Volume I, at 41.
[261] See, e.g., Black's Law Dictionary 248 (Abr. 6th ed 1991) ("Clerical error. Generally, a mistake in writing or copying. It may include an error apparent on face of instrument, record, or indictment or information.").
[262] Fairmont has argued in its case brief at 41 that we should calculate its consumption of finished veneered boards based on data it admitted in its October 26, 2010 submission of minor corrections were incorrectly calculated.
[263] Fairmont's FOP database used to calculate the Preliminary Results contained 60 different fields that contained inputs used to make tolled inputs.

We have not considered Fairmont's corrections to its previously submitted FOPs for finished veneered boards for the following reasons. First, we are unable to verify the numbers resulting from its suggested calculation. As stated above, the Department provided Fairmont with the opportunity to submit corrected FOPs for finished veneered boards prior to and at verification and Fairmont did not do so. Second, we have the verified FOPs for the tollers of veneered boards on the record. Third, Fairmont itself noted the inaccuracies of valuing veneered boards using the FOPs of the finished veneered boards, stating that its tollers used both fiber boards and particle boards, with and without patterns and also various veneers and thus that "the cost of the veneered boards in question varies by the different species of wood veneer used."[264] Finally, the Department has relied on the tollers' FOPs of veneered boards in a previous wooden bedroom furniture review and relied on the FOPs for the tollers of other inputs in this review. For consistency concerns, and to prevent parties from cherry picking when it suits their interests, we have maintained one approach for valuing all tolled inputs in this review.

Comment 24: Treatment of Negative Margins

In accordance the Department's practice in administrative reviews, in calculating the weighted-average dumping margin, the Department set the antidumping margin of any sale with a negative antidumping margin equal to zero.

- Fairmont contends that the U.S. Trade Representative stated that the U.S. will no longer zero in antidumping cases, in order to bring the U.S. into conformance with its WTO obligations and the WTO Antidumping Code in particular.[265]
- Fairmont also cites to WTO rulings which it claims holds that the Department, even in administrative reviews, cannot treat as zero percent the antidumping margin of sales where the antidumping margin was actually negative.
- Petitioners argue that by statute, the Department is precluded from changing its practice outside of the procedures set forth in section 123(g) of the Uruguay Round Agreements Act, 19 U.S.C. § 3533(g) (requiring, among other things, that there be Congressional consultation and publication of a final rule in the Federal Register before any Department practice is amended in response to report from a WTO dispute settlement panel or Appellate Body).
- Petitioners further assert that the Department's Preliminary Results are in accordance with law. In Timken Co. v. United States, the CAFC held that the Department's zeroing practice is a reasonable and permissible interpretation of the statute -- notwithstanding rulings from dispute settlement body at the WTO -- and is therefore in accordance with

[264] See Fairmont's August 12, 2009 submission at SD-40.
[265] See the Washington Trade Daily, March 29, 2010 article titled US Giving Up The Fight On Zeroing.

U.S. law.[266] The CAFC also has held that WTO reports do not bind U.S. courts in construing the laws of the United States.[267]

Department's Position:

We have not changed the methodology for calculating the weighted-average dumping margin, as suggested by Fairmont, in these final results. Section 771(35)(A) of the Act defines "dumping margin" as the amount by which the NV exceeds the EP or CEP of the subject merchandise. Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of section 771(35) of the Act.[268]

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate EPs and CEPs of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

The CAFC has found the language and congressional intent behind section 771(35) of the Act to be ambiguous.[269] Furthermore, antidumping investigations and administrative reviews are different proceedings with different purposes. Specifically, section 777A(d)(1) of the Act specifies particular types of comparisons that may be used in investigations to calculate dumping margins and the conditions under which those types of comparisons may be used, while, for

[266] See Timken Co. v. United States, 354 F.3d 1334, 1344-45 (Fed. Cir. 2004).
[267] See Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1348 (Fed. Cir. 2004). See also Corus Staal BV v. United States, 493 F. Supp. 2d 1276, 1288 (CIT 2007) (rejecting the argument that because zeroing is not applied in antidumping investigations, it cannot be applied in administrative reviews).
[268] See Timken, 354 F.3d at 1342; and Corus Staal BV and Corus Steel USA Inc. v. Department of Commerce, 395 F.3d 1343; 2005 U.S. App. LEXIS 1077; 26 Int'l Trade Rep. (BNA) 2092; 17 A.L.R. Fed. 2d (January 21, 2005) (Corus 2005).
[269] See Timken, 354 F.3d at 1341-2.

administrative reviews, these comparisons are reflected in section 777A(d)(2) of the Act. The Department's regulations further clarify the types of comparisons that will be used in each type of proceeding.[270] In antidumping investigations, the Department generally uses average-to-average comparisons, whereas in administrative reviews the Department generally uses average-to-transaction comparisons.[271] The purpose of the dumping margin calculation also varies significantly between antidumping investigations and reviews. In antidumping investigations, the primary function of the dumping margin is to determine whether an antidumping duty order will be imposed on the subject imports.[272] In administrative reviews, in contrast, the dumping margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty order.[273] Because of these distinctions, the Department's limiting of the Final Modification of Zeroing Methodology to antidumping investigations involving average-to-average comparisons does not render its interpretation of section 771(35) of the Act in administrative reviews inconsistent. Therefore, because section 771(35) of the Act is ambiguous, pursuant to Chevron,[274] the Department may interpret that provision differently in the context of antidumping investigations involving average-to-average comparisons than in the context of administrative reviews.[275]

Fairmont cites to WTO findings that it claims state that zeroing may not be done, including in administrative reviews such as in this review.[276] As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[277] Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[278] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[279] Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.[280]

Using that procedure, the Department has modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations.[281]

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270 See 19 CFR 351.414.
271 See 19 CFR 351.414(c).
272 See sections 735(a) and (c), and 736(a) of the Act.
273 See section 751(a) of the Act.
274 See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984) (Chevron).
275 The above determination is consistent with Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 75 FR 34980(June 21, 2010), and accompanying Issues and Decision Memorandum at Comment 8.
276 See e.g., Body Report, United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), 132-35, 263(a)(i), WT/DS294/AB/R (Apr. 18, 2006); Panel Report, United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), 8.2-8.4, WT/DS294/R (Oct. 31, 2005).
277 See Corus 2005, 395 F.3d at 1347-49.
278 See e.g., 19 U.S.C. § 3538.
279 See 19 U.S.C. § 3538(b)(4) (implementation of WTO report is discretionary).
280 See 19 U.S.C. § 3533(g).
281 See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping

In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.[282] Thus, because the Final Modification only affected antidumping investigations involving average-to-average comparisons, the Department has continued to deny any offsets for non-dumped transactions in this administrative review.

Comment 25: Glass

In the Preliminary Results, the Department valued glass under Philippine HTS subheading 7005.10.90 (Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked . . . Non-wired glass, having an absorbent, reflecting or non-reflecting layer . . . Other).

- Fairmont argues that Philippine imports of subheading HTS 7005.10.90 are aberrationally high due to the extremely high prices of imports from Japan.[283,284]
- Fairmont contends that Philippine imports under HTS 7005.10.90 are insignificant in quantity and aberrationally high in price in comparison to data on the record from another appropriate surrogate country (i.e., Thailand). Furthermore, Thai imports under HTS 7005.10.90 are comparable in price to the six price quotes on the record from Philippine glass suppliers, demonstrating that the Thai import data are more reliable than the Philippine import data for this HTS category.
- Fairmont argues that the description of Philippines HTS subheading 7005.10.90 includes non-wired glass, having an absorbent, reflecting or non-reflecting layer,[285] and thus may include items not comparable to the inputs used by Fairmont to produce subject merchandise. Fairmont also notes that Philippines HTS subheading 7005.10.90 contains glasses of all thicknesses. Fairmont argues that because the thickness of glass affects its per-weight price, Philippine import data are not representative of the glass inputs used by Fairmont.[286]
- Fairmont argues that the Department should use the price quotes it gathered from four Philippine glass suppliers. Fairmont contends that these price quotes are the best information on the record as they are from multiple sources, are comparable to other SVs on the record, and are itemized by thickness (the four suppliers provided price quotes for six of the seven different thicknesses of glass used by Fairmont). Fairmont notes that the Department has used price quotes to calculate SVs where import data are unavailable,

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Duty Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Final Modification).

[282] See Final Modification, 71 FR at 77724.

[283] See Fairmont's March 4, 2010 submission at Exhibits 3.C, 3.D (providing price quotes of imported glass from two Philippine companies: AA Aluminum and D and J Glass).

[284] See id. at Exhibits 3.C, 3.D, 3.E (providing glass price quotes for domestically produced clear float glass and signed certification of quotes).

[285] See Petitioners' July 20, 2009 submission, at Attachment 1 (providing a description of HTS 7005.10.90-00).

[286] See Fairmont's March 4, 2010 submission, at Exhibits 3.C, 3.D (providing price quotes of imported glass from two Philippine companies: AA Aluminum and D and J Glass).

unreliable, or unrepresentative.[287] Fairmont contends that its price quotes are reliable because they are comparable to the AUV of Thai imports under HTS 7005.10.90 as well as Philippine imports under the same HTS category when imports from Japan are excluded. Fairmont also contrasts the specificity of its price quotes with that of HTS subheading 7005.10.90 which contains glass of any thickness.

- Petitioners argue that data under Philippine HTS subheading 7005.10.90 are the most appropriate surrogate source for Fairmont's glass inputs. Petitioners argue that the burden is on Fairmont to prove that the Philippine data are aberrational and it has not done so.[288]
- Petitioners note that Fairmont has conceded that "there is no data on the record that explicitly shows that the types of imports under HTS subheading 7005.10.90 are substantially different" from Fairmont's inputs. Petitioners further point out that Fairmont initially requested that the SV for glass be based on HTS subheading 7005.10.90, stating that this was the most appropriate classification since its glass is not wired or in some form other than sheets.[289]
- Petitioners also argue that it is unclear from the record evidence if any of the price quotes submitted by Fairmont represent the type of glass it used in the production of wooden bedroom furniture.
- Petitioners contend that while the quantity of Philippine imports is less than the quantity of imports from Thailand, Fairmont has failed to establish that the 375,980 kilograms of Philippine imports is an "insignificant" amount.
- Petitioners assert that there is no basis for finding that simply because the Japanese AUV is "high," HTS subheading 7005.10.90 must include "misclassified inputs from Japan or correctly classified inputs from Japan that are not comparable to the glass inputs used by Fairmont." Petitioners further argue that the fact that the AUV of imports from one country is lower than the AUV of the Philippines does not demonstrate that the AUV of Philippine imports is aberrational.
- Petitioners also argue that the Department should not use the price quotes submitted by Fairmont.[290] Petitioners further argue that Fairmont's price quotations and invoice values are not publicly available information, do not represent "country-wide" data, and bear

[287] See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008), and accompanying Issues and Decision Memorandum at Comment 4; see Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews, 74 FR 50952 (October 2, 2009) and accompanying Issues and Decision Memorandum, at Comment 5 (using FOB sales offer from an Indian supplier of Himalayan pearl garlic) (Fresh Garlic from China). Unlike in Fresh Garlic from China, the price quotes here are not based on export sales offers, which was one of the Department's concerns in using the garlic price quotes in that proceeding.
[288] See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 6.
[289] See Fairmont's July 1, 2009 submission at FD-Exhibit SE-156-1.
[290] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 7.B.

other indicia of unreliability as the fax included in the email submission is not on company letterhead. Petitioners also claim that the price quotes are lacking information regarding the product or the type of glass and the context in which they were acquired.[291]

Department's Position:

The Philippine import data for HTS subheading 7005.10.90 contains a significant and atypical difference between the gross and net quantities with respect to imports from Japan. This indicates that the data for these Japanese imports are flawed and, therefore, unreliable.[292] Under the Philippine HTS subheading 7005.10.90, the difference between gross and net quantity is attributable to the weight of outside packing material being included in gross quantity while being omitted from net quantity.[293] Normally, the difference between gross and net quantity is very small. Analysis of the Philippine import data for HTS subheading 7005.10.90 shows that, with the exception of Japanese glass exports, the gross quantity of exports of HTS subheading 7005.10.90 to the Philippines were only three percent more than the net quantity of exports, and such small differences between gross and net quantity generally exist for all HTS categories on the record of the instant review.[294] However, the gross quantity of Japanese exports of HTS subheading 7005.10.90 are 344 metric tons, which is nearly 200% greater than net quantity of only 124 metric tons.[295] The resulting differences in price of Japanese glass exports and all other country exports to the Philippine reinforce a finding that the Japanese export data are aberrational. The average price of Philippine imports of HTS subheading 7005.10.90 from Japan is $17.98 per kilogram. This compares to the average unit price[296] of Thai imports of HTS subheading 7005.10.90 of $1.53 per kilogram[297] and by excluding the imports from Japan, the AUV of Philippine imports of HTS subheading 7005.10.90 is $0.68 per kilogram. Further, the

[291] See Fairmont's March 4, 2010 submission at Exhibits 3.D and 3.E.
[292] See the SV Memorandum at Attachment I. All import data used in the Department's findings for glass, unless otherwise noted, are from the SV Memorandum at Attachment I.
[293] See Petitioners' August 21, 2010 submission at Attachment 1 at 17.
[294] See the SV Memorandum at Attachment I. All import data used in the Department's findings for glass, unless otherwise noted, are from the SV Memorandum at Attachment I.
[295] See id.
[296] All price and quantity figures regarding Thai and Philippine imports of HTS subheading 7005.10.90 include only imports from ME countries without broadly available, non-industry specific export subsidies. See Preliminary Results SV Memo at Attachment I.
[297] We adjusted Fairmont's calculation of the average price of Thai imports of HTS subheading 7005.10.90 contained in Fairmont's March 4, 2010 submission at Exhibit 3B, and removed imports from Korea and Indonesia, which the Department has determined receive broadly available, non-industry specific export subsidies. See, e.g., Pure Magnesium from the People's Republic of China: Preliminary Results of 2007-2008 Antidumping Duty Administrative Review, 74 FR 27090, 27094 and n. 41 (June 8, 2009) (citing to Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007, 54011 (September 13, 2005), unchanged in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006); and China National Machinery Import & Export Corporation v. United States, 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004)), unchanged in Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66089 (December 14, 2009).

AUV of Thai imports of HTS subheading 7005.10.90 from Japan is $1.76 per kilogram.[298] We also note that the quantity of Thai imports of HTS subheading 7005.10.90 is over 25 times those of the Philippines.[299] This relatively large quantity of imports by Thailand increases the significance of the fact that its AUV is over 10 times lower than the AUV of Japanese exports to the Philippines. Because of the large and atypical difference between the gross and net quantity of Japanese exports to the Philippines under HTS subheading 7005.10.90, compounded by the fact that Philippine imports of HTS subheading 7005.10.90 from Japan are on average over 10 to 20 times higher than the average prices of the substantial amount of import and price data on this record, we find Philippine imports of HTS subheading 7005.10.90 from Japan to be aberrational and do not appear to be calculated correctly. Thus, we are not relying on these data for the final results.

Instead, we are using the Philippine data for glass but excluding the Japanese data. While Fairmont agrees with this approach,[300] Fairmont has argued that Philippine imports of HTS subheading 7005.10.90 of 375,980 kilograms (251,809 kilograms if imports from Japan are removed) are insignificant in quantity. However, we do not agree. Philippine imports of 251,809 kilograms of HTS subheading 7005.10.90 correspond to $170,000 in imports.[301] Of the more than 7500 different 8-digit HTS subheadings of all Philippine imports in 2008, over half had a total import value of less than $170,000.[302] Fairmont has also argued that Philippine imports of HTS subheading 7005.10.90 may include items that are not comparable to the inputs used by Fairmont to produce subject merchandise.[303] However, we note that this is the HTS category originally requested by Fairmont[304] and that Fairmont has stated that "{t}here is no data on the record that explicitly shows that the types of imports under this HTS classification are substantially different" than the glass it used to produce subject merchandise. Thus, we believe HTS 7005.10.90 adequately represents Fairmont's glass inputs. We further note that no data source available to the Department provides import data itemized at a more specific, 10-digit HTS level and thus this is the best information available.

With regard to using Fairmont's prices quotes as the SV, as not only Petitioners have noted, but Fairmont itself has acknowledged, the Department does not normally rely on price quotes to use as an SV if other publicly available data are on the record, because these do not represent actual prices or broad ranges of data, and the Department does not know the conditions under which these were solicited and whether or not these were self-selected from a broader range of quotes.[305] We also note that Fairmont's price quotes are not published publicly and that the price

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[298] See Fairmont's March 4, 2010 submission at Exhibit 3B.
[299] See id.; see also the Preliminary Results SV Memorandum listing NSO imports.
[300] See Fairmont's Case Brief, Volume II, at 30.
[301] See Preliminary Results SV Memo at Attachment I.
[302] See id.
[303] See Fairmont's Case Brief, Volume II, at 26.
[304] See Fairmont's July 1, 2009 submission at Exhibit SE-156-1.
[305] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 7.B.

quote submitted via fax is not on official company letterhead.[306] Additionally, there is not sufficient information on the record to corroborate Fairmont's claim that the glass contained in these price quotes was domestically produced[307] and there is no effective way to verify Fairmont's claim that it did not self select the lowest price quotes.[308]

As stated above, we find the Philippines imports of HTS subheading 7005.10.90, excluding the imports from Japan, to be reliable, actual prices from broad ranges of data, we are using these import prices as the SV for Fairmont's glass inputs for the final results. See the Final Results SV memo.

Comment 26: Freight Revenue

- Fairmont argues that the Department erred by capping the freight revenue offset at the corresponding freight costs, stating that freight revenue should be considered to be additional revenue earned from the sale of subject merchandise.
- Fairmont argues that the Act requires full consideration of freight revenue, noting that section 772(c) of the Act provides that price "shall be" "reduced by" the "amount, if any, included in such price, attributable to additional costs, charges, or expenses . . . which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." Fairmont states that there is no limitation as to whether such charges may be positive or negative - both apply - such that a negative charge (net freight revenue over cost) may be "reduced from" -- i.e., subtracted from -- the price.
- Fairmont notes that 19 CFR 351.401(c) directs the use of a U.S. price in the dumping margin calculation that is "net of any price adjustment reasonably attributable to the subject merchandise." Fairmont argues that freight revenue payments are "reasonably attributable" to the subject merchandise.
- Fairmont asserts that there is extensive Department precedent for fully considering freight revenue without limitation.[309]

[306] See Fairmont's March 4, 2010 submission at Exhibits 3.D. and 3.E.
[307] See id., at 3.D., 3.E., and 3.F.
[308] See Fairmont's Case Brief, Volume II, at 30.
[309] See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 54021, 54026 (September 13, 2006) (Poly Bags from the PRC 2006); see Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 72 FR 51588, 51592 (September 10, 2007) (Poly Bags from the PRC 2007); see Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008); see Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857, 6858 (February 11, 2009)(Poly Bags from the PRC Final 2009); see Purified Carboxymethylcellulose from Sweden: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 45703 (August 6, 2008); see Purified Carboxymethylcellulose From Sweden: Final Results of Antidumping Duty Administrative Review, 73 FR 75395 (December 11, 2008); see Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 27498 (May 13, 2008); see Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at

- Fairmont argues that freight revenue is not simply to reimburse the freight expenses incurred by Fairmont for the sales, but rather part of the price Fairmont's customers paid to obtain the subject WBF. Fairmont notes that freight revenue often significantly exceeded corresponding freight costs. Fairmont argues that the Department inaccurately cited Fairmont officials in the verification report as stating that only in rare situations would freight revenue be based on non-freight concerns.
- Fairmont argues that if the Department continues to find that freight revenue should be capped at freight expense, then Fairmont believes that for those Hospitality Division sales in which ocean freight costs also contained U.S. inland freight costs, the Department should include in this cap an estimate of the amount of the U.S. inland freight costs imbedded in the ocean freight column. Fairmont proposes as estimates of the imbedded U.S. inland freight costs either the U.S. inland freight costs from Fairmont to the customer of those sales for which Fairmont reported a separate amount for U.S. inland freight or, alternatively, based on a ratio of the U.S. inland freight costs from Fairmont to the customer divided by gross unit price.
- Fairmont also notes that the Department does not adjust import values for freight revenue CIF or C&F import prices used as SVs or as reported gross unit price and thus should not do so here, just because freight revenue is itemized.
- Petitioners argue that Fairmont's freight revenue was properly treated as an offset to movement expenses in the Preliminary Results. Petitioners note that in OJ from Brazil[310] pursuant to express limitations in section 772(c)(1) of the Act and the definition of "price adjustments" in its regulations,[311] the Department determined that it would not increase the U.S. price for amounts attributable to revenue generated by a respondent for provision of freight services to its U.S. customers.[312]
- Petitioners argue that the Department properly capped the freight revenue offset by the amount of U.S. inland freight charges actually reported by Fairmont. Petitioners contend

Less Than Fair Value, 73 FR 57326 (October 2, 2008); see Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 51781 (September 11, 2007); see Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 71 FR 71523 (December 11, 2006); see Non-Malleable Cast Iron Pipe Fittings from China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 4; see Notice of Preliminary Determination of Sales at Less Than Fair Value: Metal Calendar Slides from Japan, 71 FR 5244 (February 1, 2006); see Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 3463 (January 23, 2006).

[310] See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008), and the accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

[311] 19 CFR 351.401(c) provides: "In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will use a price that is net of any price adjustment, as defined in § 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).".

19 CFR 351.102(b)(38) of the regulations states that "'price adjustment' means any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." See 19 CFR 351.102(b).

[312] See OJ From Brazil, Issues and Decision Memorandum at Comment 7 (emphasis in original, citations omitted).

that because section 772(c)(1) of the Act prohibits any upward adjustment to U.S. price that is not included in the enumerated provisions therein (i.e., packing expenses, duty drawback, and U.S. countervailing duties), and because freight revenue is not included among those provisions, freight revenue received by a respondent for transportation services only can be used to offset freight expenses that are deducted from U.S. price, pursuant to section 772(c)(2) of the Act.

- By arguing that freight revenue is a "negative" charge that should be subtracted from U.S. price (thereby increasing U.S. price),[313] Petitioners assert that Fairmont disregards the plain meaning of the term "reduced by," which only permits a downward adjustment to U.S. price for movement charges.
- Petitioners argue that, Fairmont's argument that freight revenue should be interpreted under 19 CFR 351.401(c) as "reasonably attributable" to the subject merchandise misapprehends that Fairmont is a furniture manufacturing company that is being reviewed with regard to its sales of wooden bedroom furniture (and not the other profit centers that may exist in the company, like logistic functions or the sales of non-subject merchandise).[314]
- Petitioners argue that the cases cited by Fairmont as for support the Preliminary Results, are inapposite, or have been superseded.
- Petitioners argue that determinations published after the Preliminary Results continue to cap the freight-revenue offset.[315]
- Petitioners further oppose Fairmont's argument that if a freight revenue cap is applied, then the Department should estimate the amount of U.S. inland freight "imbedded" in reported ocean freight in order to determine a higher cap for the freight revenue offset. Petitioners argue that Fairmont's refusal to cooperate to the best of its ability makes doing so inappropriate in this instance. Petitioners argue that despite knowing that the Department would cap the freight revenue offset by corresponding freight costs (i.e., freight revenue received for inland freight would be capped by U.S. inland freight costs, freight revenue received for ocean freight would be capped by ocean freight costs) and despite knowing that it was not separately invoiced for U.S. inland freight and ocean freight for all sales,[316] Fairmont failed to disaggregate the inland freight costs from its reported ocean freight costs and its freight revenue from overcharges.

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[313] See Fairmont's Case Brief, Volume I, at 24-25.
[314] See Fairmont's Case Brief, Volume I, at 25-27.
[315] See e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13490 (March 22, 2010), and accompanying Issues and Decision Memorandum at Comment 2; see Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7244, 7252 (February 18, 2010); see Certain Woven Electric Blankets From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 5567, 5572 (February 3, 2010).
[316] See FDUSA Verification Report at 17.

Department's Position:

We disagree with Fairmont that the Department erred by capping freight revenue at the value of the corresponding freight costs. In the Preliminary Results, as discussed fully below and consistent with Department practice, we treated freight revenue as an offset to the movement expenses deducted from U.S. price, and not as a component of the price of the subject merchandise. Also, as will be discussed in greater detail below, because freight revenue is an offset to movement expenses and not an upward adjustment to U.S. price, we have capped freight offset at the amount of the related movement expense in accordance with the Act.

Freight Revenue is Not an Upward Adjustment to U.S. price

In past cases, we have refused to treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or price adjustments under 19 CFR 351.102(b)(38). Rather, we have incorporated these revenues as offsets to movement expenses because they relate to the transportation of subject merchandise or the foreign like product. Section 772(c)(1) of the Act provides that the Department shall increase the price used to establish either EP or CEP in only the following three instances:

> (A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,
> (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and
> (C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy.

Freight revenue is not included in section 772(c)(1) of the Act as an upward adjustment to U.S. price. Further, 19 CFR 351.401(c) directs the Department to use a price in the calculation of U.S. price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b)(38) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Again, freight revenue is not included in this list.

Freight Revenue is an Offset to Movement Expenses

Rather than treat freight revenue as an upward adjustment to U.S. price, the Department has incorporated freight-related revenues as offsets to movement expenses because they all relate to the movement and transportation of subject merchandise and which are covered under section 772(c)(2) of the Act. We further note that section 772(c)(2) of the Act only permits a downward adjustment to U.S. price for movement charges.[317] By arguing that freight revenue is a "negative" charge that should be subtracted from U.S. price (thereby increasing U.S. price), Fairmont disregards the plain meaning of the term "reduced by," of section 772(c)(2) of the Act which only permits a downward adjustment to U.S. price for movement charges.

Department Precedent Supports Categorizing Freight Revenue as a Movement Expense that Cannot be an Upward Adjustment to U.S. Price

Fairmont's argument that there is extensive Department precedent for fully considering freight revenue without limitation or that the Department treats freight revenue as sales revenue ignores the fact that current and consistent Department policy treats freight revenue as an offset to movement expenses, capped at the value of the corresponding freight costs. Fairmount's reliance on outdated precedent is misplaced. In all current cases (as well as from many previous cases), the Department has capped freight revenue.[318] Fairmont's cite to Poly Bags from the PRC provides an example where the Department originally did not mention capping freight revenue; however, the Department in later segments of the same proceeding explicitly stated that it was proper to cap freight revenue and that it had done so. While in earlier reviews of Poly Bags from the PRC the Department stated that it offset U.S. price with several types of revenues,[319] the Department explicitly stated in the preliminary results a later review of the same proceeding[320] that "{c}onsistent with {OJ from Brazil}, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise." We also explicitly discussed capping freight revenue in the final results of the same Poly Bags from the PRC review.[321]

Fairmont also relies on a determination published in 2002 to argue that the Department should allow an upward adjustment to U.S. price based on freight revenues that exceeded freight expenses.[322] The Ball Bearings Final,[323] however, are inconsistent with the Department's

[317] See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13490 (March 22, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (Carbon Steel I&D Memo); see Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 FR 44819 (August 31, 2009), and accompanying Issues and Decision Memorandum at Comment 12 (Ball Bearings I&D Memo); see Poly Bags from the PRC Final 2009, and accompanying Issues and Decision Memorandum at Comment 6 (Poly Bags I&D Memo); see OJ from Brazil, and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil I&D Memo).

[318] See Carbon Steel I&D Memo at Comment 2; see Ball Bearings I&D Memo at Comment 12; see Poly Bags I&D Memo at Comment 6; OJ from Brazil I&D Memo at Comment 7.

[319] See Poly Bags from the PRC 2006, 71 FR at 54026; see also Poly Bags from the PRC 2007, 72 FR at 51592.

[320] See Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 52282, 52285 (September 9, 2008) (unchanged in Poly Bags from the PRC Final 2009).

[321] See Poly Bags from the PRC Final 2009, and accompanying Issues and Decision Memorandum at Comment 6.

[322] See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 45 (Ball Bearings Final).

[323] See Ball Bearings Final.

existing calculation methodology as demonstrated above. In fact, the Department made clear in a later review of the same proceeding, Ball Bearings from Multiple Countries,[324] that, as opposed to the previous Ball Bearings Final, it now applies a cap to the freight revenue offset "using the corresponding expenses" incurred by the respondent.

The numerous determinations cited by the Department above demonstrate that the Department now consistently applies a policy of treating freight revenue as an offset to freight costs and capping freight revenue by the amount of corresponding freight costs. Further demonstrating the Department's practice is the fact that after the Department published the Preliminary Results in this case, it published at least three new determinations discussing the freight revenue cap. In all such post-preliminary notices, the Department has continued to treat freight revenue as an offset to movement expenses, capped by the amount of corresponding freight costs.[325]

The Department Will Not Adjust the Freight Revenue Cap for Hospitality Sales

In the Preliminary Results, because Fairmont stated that freight revenue was only provided based on the amount of U.S. inland freight,[326] the Department capped freight revenue by the amount of U.S. transportation costs. Fairmont argues that if the Department continues to find that freight revenue should be capped at freight expense, then for those Hospitality Division sales for which Fairmont reported U.S. inland freight costs in the ocean freight field the Department should include in this cap only an estimate of the amount of the purported imbedded inland freight costs. Fairmont's proposed estimate, however, is based on the freight costs between Fairmont's warehouse and its customers. There is nothing on the record demonstrating the relationship between the costs of the purported imbedded freight costs and freight costs between Fairmont's warehouse and its customers. We also note that Fairmont previously stated in its answers to three questions that it could not disaggregate its U.S. transportation costs from ocean freight.[327] Therefore the Department finds no basis for accurately estimating the U.S. transportation costs of those Hospitality Division sales for which such costs were purportedly imbedded in reported ocean freight costs and has not changed its calculation of the cap applied to freight revenue. In

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[324] See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 FR 44819, 44820 (August 31, 2009) (Ball Bearings from Multiple Countries).

[325] See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13490 (March 22, 2010) and accompanying Issues and Decision Memorandum at Comment 2 ("we have treated . . . freight revenue as an offset to movement expenses in our calculations for the final results," and explaining in note 25 that "{w}e added freight revenue to the gross unit price, capped by the amount of the associated movement expenses, which are deducted from the gross unit price"); see Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7244, 7252 (February 18, 2010) ("we capped the amount of freight revenue deducted at no greater than the amount of movement expenses"); see Certain Woven Electric Blankets From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 5567, 5572 (February 3, 2010) (same).

[326] See the FDUSA Verification Report at 17.

[327] See Fairmont's June 15, 2009 submission at 29; see also Fairmont's July 20, 2009 submission at 28.

this regard, the Department notes that a respondent seeking an adjustment bears the burden of proving entitlement to such an adjustment.[328]

The Department disagrees with Fairmont's argument that the Department is being inconsistent in capping the freight revenue of its sales but not similarly capping freight revenue when calculating the SVs or net prices based on CIF or C&F values. CIF and C&F prices, by design, link transportation costs with the price of the good. By contrast, Fairmont's approach of charging separately for freight demonstrates separate strategies for collecting for freight and the good sold. Further, as stated above, section 772(c)(1) of the Act lists upward adjustments to the export price, and this list omits freight revenue.

With respect to Fairmont's argument that its freight revenue should be considered as integral to the price of subject merchandise, this argument ignores the fact that Fairmont itself charges separately for freight as separate line items in its invoices. We also note that in its answer to the Department's supplemental question of how Fairmont determines freight revenue, Fairmont cited only reasons relating to freight costs.[329] Even in Fairmont's supplemental responses where it began arguing that freight revenue should be considered as part of sales revenue rather than as an offset to freight costs, Fairmont cited only reasons relating to freight costs for the setting of freight revenue.[330] Also, it is significant that Fairmont classifies its freight revenue under its own accounting code rather than under the accounting code for sales revenue.[331] Fairmont's own accounting practices and descriptions of how it calculates freight revenue demonstrate how freight revenue is unrelated to Fairmont's setting the price of its goods. These accounting practices and statement contradict Fairmont's assertion that the Department inaccurately cited Fairmont officials as stating that only in rare situations would freight revenue be based on non-freight concerns.[332]

Comment 27: Calculation of the Indirect Selling Ratio

In recalculating Fairmont's CEP indirect selling ratio, the Department based the denominator on the net sales Fairmont reported in Exhibit C-15 of its original section C database.

- Fairmont notes that this calculation includes an amount for freight costs. Fairmont notes that in the calculated net price, the Department also deducted freight expenses, which Fairmont acknowledges was included only in its electronic submission. Because the Department reduced gross price by freight expenses, Fairmont claims that reducing the denominator of its indirect selling ratio by the amount of freight expenses is double counting.

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[328] See e.g., SKF USA Inc. v. INA Walzlager Schaeffler KG, 180 F.3d 1370, 1377 (Fed. Cir. 1999).
[329] See Fairmont's July 20, 2009 submission at 18-19.
[330] See Fairmont's August 25, 2009 submission at 11-12.
[331] See the FDUSA Verification Report at 6, 17-18.
[332] See the FDUSA Verification Report at 17. The Department notes that it stands by its quote of Fairmont officials stating at verification that only in rare situations would freight revenue be based on non-freight concerns.

- No other party commented on this issue.

Department's Position:

We have confirmed that freight expenses were removed in calculating net sales in Exhibit C-15. Because the Department used this net sales figure as the denominator in calculating Fairmont's indirect selling ratio, and because this ratio was applied to a sales figure that included freight expenses, we agree that freight expenses should not be omitted from the denominator of Fairmont's indirect selling ratio. For the final results, we have recalculated Fairmont's indirect selling ratio accordingly. See the Final Results Analysis Memo.

Comment 28: Unit of Measure for HTS Subheading 4421.90.99

In the NSO, the unit of measurement for HTS subheading 4421.90.99 is pieces. However, as stated in Comment 15, the unit of measurement for almost all categories within this subheading is in fact kilograms.

- Petitioners have noted that the Department aggregated the entry of "paddles and oars" from the United States (stated in number of pieces) with the entry of "other" wood from the United States (stated in gross kilograms).[333] In addition, the Department appears to have erroneously restated the unit of measure for entries within HTS subheading 4421.90.9909 from "gross kilograms" to "number of units."
- No other party commented on this issue.

Department's Position:

We agree with Petitioners and for the final results have removed the imports of HTS subheading with a unit of measure other than kilograms, recalculated the AUV of HTS subheading on a per kilogram basis, and applied this to all corresponding inputs. See the Final Results SV Memo.

Comment 29: Inventory Carrying Costs for Direct Shipments

- Fairmont argues that the Department should not assign inventory carrying costs to those transactions directly delivered to the U.S. customer because for these sales FDUSA incurred no warehousing costs in the United States.
- Fairmont notes that for all sales with a reported entry date, the Department calculated the inventory carrying costs based on the period between the reported date of shipment and the reported entry date and that this incorrectly deducted inventory carrying costs from U.S. price.
- No other party commented on this issue.

[333] In the Excel file, 767 paddles + 22,078 kilograms = 22,845. See Petitioners' July 20, 2009 submission of at Attachment 1, Exhibit 2 (raw NSO data).

Department's Position:

With regard to Fairmont's argument that because certain sales incurred no warehousing costs, they incur no inventory carrying costs, this argument conflates warehousing costs with inventory carrying costs. Inventory carrying costs are defined in the Glossary of Terms in Appendix I of the Department's antidumping questionnaire, as the "interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer." Warehousing costs are not directly relevant to whether a sale should incur inventory carrying costs.

However, we agree that in the Preliminary Results the Department did incorrectly calculate inventory carrying costs for Fairmont's sales for which it reported a date in the entry date field of its sales database. As stated in the Preliminary Results "{t}he Department has stated in prior cases that time-on-the-water between the foreign manufacturer and its CEP affiliate is an in-transit cost that should not be included in the reported inventory carrying cost."[334] Thus, in these final results, we have not applied any inventory carrying costs to any period prior to entry into the United States. However, consistent with Department practice, in these final results,[335] for all CEP sales we have calculated inventory carrying costs for the period after entry into United States but prior to shipment to the customer. See the Final Results Analysis Memo.

Comment 30: Financial Ratios

In the Preliminary Results, we valued SG&A, factory overhead, and profit, using the audited financial statements for the fiscal year ending December 31, 2008, from the following companies: Tequesta International Inc. (Tequesta); Insular Rattan and Native Products Corp. (Insular Rattan); Horizon International Manufacturing, Inc. (Horizon); Arkane International Corporation (Arkane); and Casa Cebuana Incorada (Casa Cebuana), which are all Philippine producers of wooden bedroom furniture that received no countervailable subsidies, earned a before tax profit in 2008, and did not maintain substantial retail operations.

After the Preliminary Results, parties placed on the record further information, argument and new financial statements that the Department has considered below. In selecting SVs for FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate ME country. In choosing surrogate financial ratios, it is the Department's policy to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[336]

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[334] See the Preliminary Results Analysis Memo.

[335] See the Department's Antidumping Questionnaire at C-31 "For CEP sales, report the unit opportunity cost incurred from the time of arrival in the United States until the time of shipment from the warehouse or other intermediate location in the United States to the first unaffiliated customer."

[336] See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

Interested parties have made general arguments that affect several, or all, financial statements on the record, as well as company-specific arguments. We have addressed each argument, in turn.

A. General Issues

i) Treatment of Factory Supplies, Production Supplies, and Indirect Materials

- Fairmont argues that the Department should classify factory supplies and indirect materials as raw materials for the surrogate financial ratio calculations. Fairmont argues that some companies on the record report factory supplies or indirect materials with raw materials while others report factory supplies as a separate line item under manufacturing overhead. Regardless of where they are placed in a surrogate financial statement, Fairmont argues that factory supplies are recorded as inventory items and reported along with raw materials, work-in-process, and finished goods. Some items classified as factory supplies or indirect materials include the raw materials that are used in the production of furniture, such as powders, solutions, glue, tape, foam, accessories, sandpaper, screws, springs, hinges, nuts, washers, bolts, knobs, glazes, lacquers, stains, thinners, and velcro.[337] Fairmont argues that to the extent the Department considers one of these inputs to be an FOP then it must classify factory supplies under raw materials rather than as manufacturing overhead.
- Fairmont has placed on the record an affidavit by a Philippine accountant that "it may be reasonably inferred that companies that report high indirect to raw materials ratios include 'indirect raw materials' items such as glue, fasteners, varnish, paint, etc. and perhaps even miscellaneous wood inputs as indirect materials or factory supplies."[338]
- The Coalition argues that Fairmont has reported virtually all materials as part of its FOP and thus the inclusion of production supplies in the overhead ratio results in double-counting of costs.
- Petitioners disagree with Fairmont's argument regarding the treatment of factory supplies, arguing that the Department treats indirect material costs as manufacturing overhead unless there is evidence that those costs are accounted for elsewhere in the Department's calculations (even if those indirect material costs are high compared to raw material costs).[339]
- Petitioners also argue that the Department has previously rejected the argument that "high indirect to raw material ratios" demonstrate that the costs in "factory supplies" or

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[337] See Fairmont's March 15, 2010 submission at Exhibits 11-14.

[338] Fairmont's Rebuttal to Petitioners' Post-Preliminary Results Submission of Surrogate Financial Statement Information (March 15, 2010, resubmitted March 29, 2010) at Exhibit 15, at 581.

[339] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 16, at 53; see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 4 (treating "consumables consumed" as overhead, absent specific evidence that the consumables were traceable to specific direct materials).

"indirect materials" line items must include direct materials,[340] noting that the fact that the "production supplies" line items are large compared to the line items of raw materials does not provide information regarding specific costs in these line-items, and therefore does not provide a basis for the Department to exclude costs from factory supplies.[341]

- Petitioners contend that the Philippine accountant's statement is not specific to any financial statement and does not specifically identify the direct material costs that are purportedly being double counted. Petitioners point out that the Department has found similar statements to be unpersuasive in past cases.[342]

Department's Position:

Fairmont and the Coalition have not identified any input that Fairmont reported in its FOP database that was classified by potential surrogate Philippine companies as factory supplies, production supplies, or indirect materials. Since they have not demonstrated any double-counting in calculating the final results, the Department has included all factory supplies, production supplies, or other indirect materials in manufacturing overhead and not raw materials.

The Department's practice is to treat indirect materials as manufacturing overhead unless there is a specific statement in the financial statements as to what costs are included in the manufacturing overhead line items and those costs are accounted for elsewhere in the Department's calculations. Fairmont has cited its resubmitted March 15, 2010 Surrogate Financial Comments, at Exhibits 11-14 in support of its argument that Philippine companies categorize items Fairmont reported as FOPs as manufacturing overhead. Although Fairmont has not cited to any specific evidence within these pages in support of its argument (even though it bore the burden to do so) the Department has examined the 227 pages cited by Fairmont and found no evidence that the accounting policies or the accounting statements of the three companies whose information is contained therein considered any item that Fairmont reported as a direct material input to the Department as a factory supply or indirect material.

Moreover, the argument that high indirect to raw materials ratios indicate that raw material costs are in overhead items has been rejected by the Department in a prior segment of this proceeding where the Department noted that supply costs that are high when compared to raw material costs does not, provide a basis for adjusting supply costs.[343]

Similarly, Fairmont's affidavit from the Philippine accountant is not specific to any of the financial statements on the record of this review and sheds no light on what materials and costs

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[340] See Fairmont's March 29, 2010 submission at Exhibit 15, at 581.

[341] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 16, at 54.

[342] See id.

[343] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 16, at 54.

are actually included in the surrogate financial statements. Thus, Fairmont cannot demonstrate what portion, if any, of the factory supplies or indirect materials line items for the surrogate companies relate to particular raw materials. Because there is "no evidence in the surrogate financial statements that the costs associated with these line-items can be traced to a particular product or reflect the materials for which the respondent reported FOPs," the Department will continue in these final results to follow its "general practice and treat indirect materials {, such as factory supplies,} as overhead in the calculation of the surrogate financial ratios."[344]

Additionally, the entities within Fairmont that produced subject merchandise reported significant manufacturing overhead costs in their own accounting records[345] even though Fairmont did not consider any of the reported raw material costs as factory overhead. Thus, based on Fairmont's own statements, it incurs significant manufacturing overhead costs beyond the inputs it identified as FOPs, similar to costs in the potential surrogate companies which it claims should not be considered in the final results. Accordingly, the presence of significant overhead expenses does not necessarily demonstrate that raw material costs were improperly categorized as overhead in the surrogate financial statements or the Department's surrogate financial ratios.

Further, Department practice is "to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy. . . . In calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category."[346] Therefore, we have not adjusted the overhead expenses of any financial statements chosen as the basis for the surrogate financial ratios.

ii) Inclusion of Selling and Interest Expenses in the Surrogate Financial Ratio

Selling Expenses

- Fairmont argues that selling expenses should be excluded from the calculation of surrogate financial ratios because its two factories that made subject merchandise during the POR, DGSR and TCSR, only incurred expenses related to selling to another Fairmont

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[344] See id., and accompanying Issues and Decision Memorandum at Comment 16, at 53.
[345] See Fairmont's August 11, 2009 response at Exhibit 17-2.
[346] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 15 (citing Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 4; Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative Review and New Shipper Reviews, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2; and Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China, 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 4).

affiliate and did not incur the types of selling expenses associated with sales to an unaffiliated party (i.e., expenses relating to advertising, promotions, representation entertainment, commissions, and other similar expenses).

- Petitioners disagree and assert that Fairmont cannot establish that it did not incur similar selling expenses in the PRC,[347] and that regardless of whether Fairmont incurred such expenses, the Department's "practice is to not attempt to duplicate the exact production experiences of Chinese manufacturers in the surrogate SG&A calculation"[348] or to make adjustments to financial statements that may introduce unintended distortions to the data. Also, Petitioners note that in Honey from China, the Department included commissions in the surrogate SG&A calculation, stating that "whether or not a PRC producer actually incurred sales commissions is irrelevant to the Department's surrogate SG&A calculation, because the Department does not modify surrogate financial ratios to match the particular circumstances of the NME country."[349] Thus, Petitioners argue that there is no basis to make Fairmont's requested adjustments to the surrogate financial ratios.[350]

Interest Expenses

- Fairmont argues that interest expenses should be excluded from the calculation of surrogate financial ratios because DGSR did not have any bank loans or related interest expenses during the POR,[351] and because TCSR's interest expenses were negligible during the POR (i.e., only 0.2 percent of its 2008 sales value).[352] Fairmont asserts that it is the Department's practice to match surrogate companies' production experience with

[347] Although Fairmont provided summary financial statements for DGSR and TCSR, it did not provide the necessary details behind those financial statements that would demonstrate whether or not the Chinese entities incurred these specific types of selling expenses. See Fairmont's May 22, 2009 submission at Exhibits A-5.b(2)-1 & 2.
[348] See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 20D. See also Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).
[349] See id.
[350] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decisions Memorandum at Comment 15 (citing Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 4; Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2; and Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China, 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 4.
[351] See Fairmont's May 22, 2009 submission at FD-Exhibit A-5.b (2)-1 (providing the audited financial statements of DGSR for 2008 and 2007).
[352] See id., at FD-Exhibit A-5.b (2)-2 (providing the audited financial statements of TCSR for 2008 and 2007).

the respondent's production experience.[353] Fairmont argues that including interest expenses overstates the SG&A, which overstates the NV and, therefore the dumping margin.

- Petitioners disagree, stating that there is no basis to make Fairmont's requested adjustments to the surrogate financial ratios for the treatment of interest expenses. Petitioners argue that the reason the Department calculates surrogate financial ratios is because it does not rely upon actual expenses incurred in the PRC. Petitioners contend that to the extent that DGSR or TCSR incur little or no interest expenses to finance their operations, it is because they operate in an NME. Petitioners argue that the statute requires that the Department include in NV the interest expenses incurred by comparable producers in an ME country[354] and again note that the Department's practice is not to attempt to duplicate the exact production experiences of Chinese manufacturers in the surrogate SG&A calculation[355] or to make adjustments to financial statements that may introduce unintended distortions to the data.[356]

Department's Position:

We disagree with Fairmont. Selling and interest expenses should not be removed from the surrogate financial statements before calculating financial ratios. The Department's practice is not to attempt to adjust the surrogate producer's overhead figures to account for potential cost differences between the surrogate companies and the respondent.[357] Specifically the Department has explained that its practice is "to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy. . . . In calculating factory overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category."[358] Therefore, we have not adjusted the SG&A expenses of any financial statements chosen as the basis for the surrogate financial ratios. Further, the record indicates that Fairmont's factories did incur certain selling

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[353] See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum, at Comment 9F.
[354] See 19 U.S.C. § 1677b(c).
[355] See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 20D. See also Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).
[356] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 15 (internal citations omitted).
[357] See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 2.
[358] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 15 (internal citations omitted).

and interest expenses, thus there would be no basis for removing all selling and interest expenses from the surrogate financial statements as suggested by Fairmont.[359]

iii) Whether the Department Should Consider the Philippine Financial Statement Submitted by Fairmont on April 5, 2010 for Surrogate Value Purposes

On April 5, 2010, Fairmont submitted a Philippine financial statement from Betis Crafts Inc. to be considered for SV purposes. The Department rejected this statement because it was submitted after the March 4, 2010 due date for surrogate information.[360] Fairmont argues that there is good cause for the Department to accept and use Betis Crafts Inc.'s financial statement.

- Fairmont argues that this financial statement in particular will aid the Department's analysis to accurately determine a dumping margin because the size and structure of the company is comparable to its size and structure and its accounting records include separate breakouts for indirect material costs.
- Fairmont also notes that it submitted this financial statement as soon as it became available. Fairmont claims that the financial statements included in Petitioners March 4, 2010 submission raised for the first time the critical issue of indirect material costs and the financial statement it submitted addresses this indirect material cost issue. Fairmont maintains that by not allowing it to submit its April 5, 2010 submission, it was provided almost no opportunity to respond to Petitioners' March 4, 2010 submission.
- Fairmont also states that a Philippine law firm that had promised help in providing surrogate value information suddenly ceased assisting Fairmont and would not advise of alternative firms to provide surrogate information. Fairmont notes that Petitioners have been actively talking to this firm on this very subject and that this may explain the un-responsiveness of this firm.
- Fairmont requests that if the Department continues to reject the April 5, 2010 submission, it "separately consider and use on its own authority" the financial statement contained in that submission. Fairmont notes that in any NME dumping case, the Department conducts its own research regarding potential surrogates, and then of its own accord decides to use them if appropriate.
- Petitioners argue that Fairmont simply reiterates the arguments for accepting the financial statement from its April 5, 2010 submission and those arguments have no more validity now than they did when first considered by the Department.
- Petitioners contend that the Department also must reject Fairmont's new request that the Department "separately consider and use on its own authority" the financial statement.[361] Petitioners argue that while it might be appropriate for the Department to do such research in order to fill a minor gap in the record it would be inappropriate for the

[359] Fairmont stated that TCSR incurred interest expenses, but that they were negligible. See Fairmont's Case Brief, Volume II, at 56. See also Fairmont's May 27, 2009 submission at Exhibit A-5.b (2)-2.
[360] See April 5, 2010 letter to Fairmont entitled "New Factual Information Contained in Fairmont Design's April 5, 2010, Submission."
[361] See Fairmont's April 9, 2010 Surrogate Br. at II-58.

Department to adopt a financial statement without providing interested parties an opportunity to provide rebuttal information or comments about the suitability of the surrogate producer or the completeness of the financial statement.

Department's Position:

For the same reasons explained in the April 5, 2010 letter to Fairmont (which addresses the arguments summarized above) the Department has not accepted the financial statement at issue.[362] The Department noted in the letter that Fairmont was aware of the indirect material cost issue prior to filing the late financial statement, and that there was no reason, in this case, for extending the deadline based on the availability of the financial statement or problems with other firms (39 financial statements have already been filed on the record). Moreover, although Fairmont indicates that the rejected financial statement was submitted to rebut the issue of indirect material costs; its arguments above indicate it wanted the statement to be considered in calculating surrogate financial ratios. Since Fairmont failed to file the financial statement by the due date for SV information or by the due date for rebuttal SV information, the Department continues to find that the financial statement in question constitutes untimely filed factual information. Accordingly, the Department will not consider this financial statement in the final results of review.

v) Whether the Department Should Use the Financial Statements of Companies that Produce Non-Wooden Bedroom Furniture in Addition to Wooden Bedroom Furniture

- Petitioners contend that it is appropriate to use surrogate financial data from companies that produce both wooden bedroom furniture and non-subject furniture products.[363] Petitioners cite the third review in this proceeding, in which the Department noted that: "we disagree with Yihua Timber's contentions that the only appropriate surrogate financial statements are those of companies that either solely produce {wooden bedroom furniture} or disaggregate their production of furniture based on the specific type of material used."[364]
- Petitioners argue that the record of the instant review shows, moreover, that the Philippine companies used by the Department in the Preliminary Results make products in addition to wooden bedroom furniture such as: Arkane makes "bamboo, seagrass, rattan and abaca" furniture, as well as dining room and living room furniture.[365] Casa Cebuana makes upholstered furniture, rattan furniture, and metal furniture and dining

[362] See April 5, 2010 letter to Fairmont entitled "New Factual Information Contained in Fairmont Design's April 5, 2010, Submission."
[363] See Fairmont's March 29, 2010 submission at Exhibits 1-10.
[364] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14, at 38.
[365] See Fairmont's January 13, 2010 submission at Exhibit 6, at 55.

room and living room furniture.[366] Tequesta makes "rattan furniture" and dining room and living room furniture. Insular Rattan makes rattan and bamboo furniture, as well as dining room and living room furniture. Horizon also makes furniture from bamboo, natural fibers (abaca, seagrass, etc.), and metal.[367]

- Petitioners claim that if the Department were to reject financial statements because they are from companies that make wooden bedroom furniture and other furniture products and accessories there would be no companies available to calculate surrogate financial ratios.
- Petitioners further argue that the Department also should use financial data from companies that produce wooden furniture, but not wooden bedroom furniture, because such items are similar to subject merchandise.
- No other parties commented on this issue.

Department's Position:

We agree with Petitioners, in part. Fairmont manufactures and sells non-subject merchandise in addition to wooden bedroom furniture.[368] Thus, consistent with the Preliminary Results, there is no basis to exclude from our financial ratio calculation, financial data from companies that manufacture non-subject merchandise in addition to wooden bedroom furniture.

However, we are not basing financial ratios on data from producers that make only non-subject merchandise because we have useable statements from producers which make at least some wooden bedroom furniture (i.e., like-merchandise). The overriding criterion for choosing surrogate financial data is that the Department rely on the best available information. Petitioners have failed to demonstrate why relying data from a pool of companies some of which only produce non-subject merchandise is better information than data from a pool of companies that all produce wooden bedroom furniture. Financial statements from producers that make wooden bedroom furniture or wooden bedroom furniture and other furniture products, constitute the best available information because they are more specific than financial statements of producers of merchandise that is comparable to (but not) wooden bedroom furniture. Further, relying on financial data from producers of wooden bedroom furniture in this case leaves a large pool of surrogate candidates from which to choose. Thus, we have not changed our approach in the Preliminary Results of excluding from consideration companies that do not produce wooden bedroom furniture.

[366] See Petitioners' March 25, 2010 submission at Attachment 6 at 1-21.
[367] See Fairmont's November 12, 2009 submission at Exhibit 9 at 68-69.
[368] See the February 1, 2010 memoranda titled "Verification at Dongguan Sunrise Furniture Co., Ltd. in the 4th Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," at 6; the February 1, 2010, memoranda titled "Verification at Taicang Sunrise Wood Industry Co., Ltd. in the 4th Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," at 8; and FDUSA Verification Report at 7.

vi) Whether a Company's Size Affects Its Financial Ratios

- Citing Fairmont and the Coalition's arguments for excluding small furniture companies because their "small" sales revenues (a measure of company size) result in aberrational SG&A and/or factory overhead ratios,[369] Petitioners assert that the respondents have arbitrarily identified what they term "smaller" furniture producers and that there is no basis for differentiating the ratios of these companies from other surrogate producers, other than to selectively reject financial statements submitted by Petitioners. Petitioners claim that record evidence does not support the respondents' contention that economies of scale result in distorted SG&A and overhead ratios for small furniture companies or demonstrate a statistically significant relationship between revenue and SG&A and overhead ratios.[370]
- Petitioners argue that, in light of their correlation analysis, the existence of different financial ratios demonstrates nothing more than the obvious fact that different companies will have different financial ratios and that this is why the Department prefers to use a simple average of the ratios from multiple financial statements.[371] Petitioners further argue that there is no record evidence that furniture companies in general, or Philippine furniture companies in particular, benefit from economies of scale. Nor is there any support in the record for the proposition that the SG&A/overhead ratios are distorted by smaller sales revenues.
- Petitioners also argue that the Department consistently has determined that the size of a company is not relevant to its financial ratios.[372]
- Petitioners cite an article provided by Fairmont, stating that whether economies of scale even apply depends on the "kinds of production" and, even then, do not necessarily apply.[373]
- Petitioners argue that a small manufacturing company operating near full capacity utilization may have a much lower per unit fixed cost than a much larger manufacturing

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[369] See Fairmont's November 12, 2009 submission at 4; see Fairmont's December 24, 2009 submission at 14-16; see also the Coalition's March 15, 2010 submission at 6-7.
[370] See Petitioners' April 9, 2010 Case Brief at Exhibits 1 and 2.
[371] See Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343, 1350-51 (CIT 2001).
[372] See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (the Department explained that production volume might have the possibility of leading to distortions when the financial statements themselves demonstrate that the company suffered a major disruption in sourcing, resulting in a decrease in yearly production that substantially differed from normal production (citing Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3)); see also Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1 and Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decisions Memorandum at Comment 14.
[373] See Fairmont's March 29, 2010 submission at Exhibit 3 (Dwight H. Perkins, Economics of Development (5th ed. 2001) at 665).

company operating at a lower capacity utilization rate. Petitioners assert that there is no information on the record regarding the capacity utilization ratios of the Philippine furniture producers; thus, Petitioners argue that it would be pure speculation to suggest that a company has lower per unit fixed costs just because it has a higher level of sales. Petitioners therefore deduce that it would be entirely speculative and arbitrary to assume that the SG&A/overhead ratios decrease as the size of a company increases.

- Fairmont notes that Petitioners' graphs demonstrate a wider variance among the SG&A ratios of small companies than the SG&A ratios of larger companies. Fairmont argues that there are several explanations for this including economies of scale, rapid growth or emphasis on growth, sophistication of the business model, a new business, sporadic customer base, or a focus in a particular area, such as sales. Because Fairmont is a large wooden bedroom furniture producer, it contends that the Department should only use the financial ratios of companies that have established production facilities and more than mere boutiques or "mom and pop" operations.
- The Coalition argues that while size of a company alone may not always be determinative of its SG&A and overhead ratios, there is a direct relationship between the sales revenue and the ratios for the following companies that have the lowest sales revenue and the highest general expense ratios, and thus the Department must reject the surrogate financial statements of these companies: Heritage Muebles Mirabile Export Inc. (Heritage), APY Cane International (APY Cane), SS Design Inc., and City Cane Corp.

Department's Position:

The Department stated in the previous administrative review of this order that "we continue to believe that the Department should not exclude the financial statements of the smaller companies absent specific record evidence demonstrating that economies of scale affect the financial ratios . . ."[374] Fairmont and the Coalition do not dispute Petitioners' argument that there is no evidence of an overreaching trend of economies of scale where the larger a company is, the smaller its SG&A and overhead ratios are, and we can find no information demonstrating such a relationship to be the case. Nor have Fairmont or the Coalition challenged Petitioners' analysis demonstrating that there is no overall correlation between size and the financial ratios derived from all of the financial statements on the record. In Dorbest, the CAFC held that the Department did not have to exclude the financial ratios of smaller companies from consideration.[375] In so holding, the Federal Circuit stated:

> …the CIT went beyond the available evidence when it concluded that, because the average SG&A ratio for the larger companies was lower than the average SG&A ratio for the smaller companies, SG&A ratio must be completely determined by company size in the absence of any mathematically-supported finding by Commerce as to another cause.

[374] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14.
[375] Dorbest Ltd. v. United States, 604 F.3d 1363, 1373-74 (Fed. Cir. 2010).

> If nothing else, the fact that the largest company . . . had an SG&A ratio higher than that of the smallest company . . . suggests that some other factor or factors beyond just company size must be at work in determining a company's SG&A ratio. By demanding that Commerce discover and explain what these factors were, merely because there was some evidence to support the hypothetical economy-of-scale theory, the CIT did not give appropriate deference to Commerce's application of the statute's requirement that Commerce use the "best available information." 19 CFR 351.408(c)(4).[376]

This reasoning is even more persuasive in this case where Petitioners have demonstrated that, when considering the financial ratios of all companies on the record, there is no correlation between size of a company and size of the corresponding financial ratio.[377] Fairmont has ignored this overall trend and focused on only the smaller companies with high financial ratios; such cherry picking, unsupported by demonstration of true causation, is unpersuasive. The CAFC ruling and Petitioners' analysis require the identification of a more persuasive cause.

Fairmont and the Coalition have further failed to identify any characteristic in these smaller companies making any of them abnormal, unreliable, or in any other way distinguish them from the experience of Fairmont. Fairmont suggests several hypothetical explanations as to why the financial ratios of these companies vary more than ratios of larger companies but makes no claims that it has actually identified any factor contributing to what it claims is the greater variance of the financial ratios of smaller companies. Similarly, the Coalition provides no explanation beyond company size that would distinguish these small companies with high financial ratios from Fairmont. In line with the CAFC decision cited above, Department policy is "that the existence of higher prices alone does not necessarily indicate that price data are distorted or misrepresented" and thus need to be excluded from our analysis.[378] While this quote identifies prices rather than relatively high financial ratios or variances in financial ratios, we find the reasoning equally applicable to Fairmont's and the Coalition's arguments regarding the issue here.

B. Individual Company Issues

In the Preliminary Results, the Department based the surrogate financial ratios on all companies that: (1) manufactured wooden bedroom furniture; (2) had contemporaneous financial statements on the record; (3) received no subsidies found by the Department to be countervailable; (4) did not maintain significant retail operations outside of the factory; (5) provided sufficient data for the Department to calculate surrogate factory overhead, SG&A and profit ratios; and (6) had an

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[376] See id.

[377] See Petitioners' Case Brief at 22-32.

[378] See e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1. See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6.

operating profit in 2008. No parties have disputed that all of the companies discussed below have contemporaneous financial statements on the record, received no subsidies found by the Department to be countervailable, provided sufficient data for the Department to calculate surrogate factory overhead, SG&A and profit ratios, and had an operating profit in 2008. Below we have addressed parties' arguments concerning whether a company produced subject merchandise and, where argued, whether the company maintained significant retail operations outside of the factory:

i) Companies Used to Calculate the Preliminary Results

Parties placed financial statements of 27 different companies on the record prior to the Preliminary Results. We used financial statements from six of these companies in the Preliminary Results. Parties have not submitted comments on three of those companies and we have continued to use the financial ratios of these companies in calculating the final results.

a) Tequesta

- Petitioners claim that Tequesta is an inappropriate surrogate company because its financial statements indicate that it either (1) engages in substantial reselling of traded goods or (2) performs only minimal manufacturing processes, such as finishing. In support of this assertion, Petitioners note that Tequesta's labor costs are minimal in relation to its material costs. Petitioners argue that if Tequesta is primarily a trading company, its financial statements are unusable because it is impossible to disaggregate purchases of traded goods from purchases of other raw materials.[379] Alternatively, Petitioners argue, if Tequesta performs only minimal processing such as finishing, its financial statements are unusable because the company, as a mere finisher, is not a viable surrogate for full-scale Chinese producers.[380]
- Petitioners further argue that Tequesta is an inappropriate surrogate company because its financial statements are incomplete. Specifically, Petitioners note that Tequesta's financial statements are missing an Exhibit and argue that it is unclear what information would have been contained in that Exhibit, and whether that Exhibit would have further demonstrated that Tequesta is an unsuitable surrogate company. Petitioners further note

[379] The Department has an established practice of excluding from the denominator of the surrogate financial ratios costs associated with purchasing traded or finished goods. See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004-2005 Administrative Review and Partial Rescission of Review, 71 FR 75936 (December 19, 2006), and accompanying Issues and Decision Memorandum at Comment 2. Because Tequesta's material costs do not separately distinguish between purchased raw materials and purchased finished goods, use of Tequesta's financial statements would significantly understate the surrogate financial ratios and would, therefore, be distortive. See Fairmont's September 11, 2009 submission at Exhibit 2.

[380] For example, the Department prefers surrogate companies that are at a comparable level of vertical integration as the respondent. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

that the Department has an established practice of not using incomplete financial statements.[381]

- Petitioners claim that the other Philippine producers used in the Preliminary Results or proposed to be used in these final results had labor-to-material cost ratios ranging from eight percent to over 200 percent, with an average of 59 percent.
- Fairmont argues that the labor-to-material cost ratios in Tequesta's financial statements are more comparable to Fairmont's labor-to-material cost ratios than Petitioners' purported industry average of 59 percent, which is made up of data from companies that should be excluded for a variety of reasons.[382] Fairmont contends that DGSR's direct labor to raw materials ratio was 11 percent[383] and TGSR's direct labor to raw materials ratio was 19 percent.[384]
- Fairmont cites to the ITC's final injury decision in the wooden bedroom furniture case, which found that the labor cost component of wooden bedroom furniture production in the PRC was very low (around ten percent).[385] As such, Fairmont argues that low labor-to-material cost ratios are more representative of Chinese producers, like Fairmont.
- Fairmont argues that Petitioners falsely claim that the financial statements of Tequesta are unusable because it is "impossible to disaggregate purchases of traded goods from purchases of other raw materials." Tequesta's financial statements provide line items for raw materials, work-in-process, and finished goods. Fairmont contends that this shows that Tequesta's raw materials costs are not related to semi-finished or finished goods.
- Fairmont argues that Tequesta's financial statements contain all of the necessary information to comply with the Philippine Financial Reporting Standards.[386]
- Fairmont argues that the most reasonable explanation for the absence of an "Exhibit B" in the financial statements is the misnumbering or the accidental omission of Exhibit B on one of the financial statements. Furthermore, Fairmont contends that there is no reference anywhere in the financial statements to an Exhibit B while there are references to Exhibit A and Exhibit C in Tequesta's "Statement of Financial Position."[387]

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[381] See Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009), and accompanying Issues and Decision Memorandum at Comment 1; see Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14 (excluding Insular Rattan's financial statements as incomplete).
[382] See Fairmont's Rebuttal Brief, Volume II, at Exhibit 2 (breaking down materials and labor costs by type).
[383] See Fairmont's June 15, 2009 submission at Exhibit D-17-2 at 4 (16,125,932/144,842,207 = 11%).
[384] See id., at 8 (11,723,972/61,719,919 = 19%).
[385] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5 (December 2004), available at <http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2003/wooden_bedroom_furniture/final/PDF/woodenbedroomfurniturefinal.pdf>.
[386] See Fairmont's January 13, 2010 submission at 5.
[387] See Fairmont's September 11, 2009 submission at Exhibit 1. There is also a citation to Exhibit C on page 4 of the notes to Tequesta's financial statements.

Department's Position:

We have not used Tequesta's financial data in calculating surrogate financial ratios. Shipping manifests placed on the record by Petitioners describe 55 of Tequesta's shipments to the United States,[388] only 14 of which identify the country of origin as the Philippines.[389] This sample supports Petitioners' claim that Tequesta is primarily a reseller, unlike Fairmont. This difference is much more significant than any claimed similarity with respect to labor-to-material cost ratios. Tequesta's purportedly low labor-to-material cost ratio could be explained by the fact that it is primarily a reseller, rather than by the use of production processes similar to Fairmont. Further, contrary to Fairmont's claim, Tequesta's financial statements do not separately distinguish between purchased raw materials and purchased finished goods and, thus, using Tequesta's financial statements would understate the percentage of manufacturing overhead costs in the corresponding financial ratio and, therefore, be distortive (the Department does not use the cost of traded finished goods in calculating financial ratios).[390] Given that there are 14 usable financial statements on the record from companies that earn none or almost none of their income from resales, we do not believe Tequesta's financial statements constitute the best available information for calculating financial ratios. Accordingly, we are not using Tequesta's financial statement for the final results.

b) Insular Rattan

- Petitioners argue that Insular Rattan is an inappropriate surrogate company because its financial statements indicate that Insular Rattan either (1) engages in substantial reselling of traded goods or (2) performs only minimal manufacturing processes, such as finishing. In support of their assertion, Petitioners argue that Insular Rattan's labor costs are minimal in relation to its material costs. Petitioners argue that if Insular Rattan is primarily a trading company, its financial statements are unusable because it is impossible to disaggregate purchases of traded goods from purchases of other raw materials.[391] Alternatively, Petitioners argue, if Insular Rattan performs only minimal processing such as finishing, its financial statements are unusable because the company, as a mere finisher, is not a viable surrogate company for full-scale Chinese producers.[392]

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[388] We note that the information in the shipping manifest concerning Tequesta's shipments was not considered in the Preliminary Results.

[389] See Petitioners' September 28, 2009 submission at Exhibit 1.

[390] See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004-2005 Administrative Review and Partial Rescission of Review, 71 FR 75936 (December 19, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

[391] See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004-2005 Administrative Review and Partial Rescission of Review, 71 FR 75936 (December 19, 2006), and accompanying Issues and Decision Memorandum at Comment 2. Because Tequesta's material costs do not separately distinguish between purchased raw materials and purchased finished goods, use of Tequesta's financial statements would significantly understate the surrogate financial ratios and would, therefore, be distortive. See Fairmont's September 11, 2009 submission at Exhibit 2.

[392] For example, the Department prefers surrogate companies that are at a comparable level of vertical integration as the respondent. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates

- Petitioners further argue that Insular Rattan is an inappropriate surrogate company because its financial statements do not conform to Philippine GAAP. Petitioners contend that although the financial statements in question were audited, and affirmed by the auditor to be prepared in accordance with the GAAP of the Philippines, and contain explanations of the company's accounting policies, the Department should reject them nevertheless because they fail to meet the requirements of the Philippine's Statement of Financial Accounting Standards, which requires the disclosure of tax expenses. Petitioners argue that Insular Rattan statements were rejected in the third administrative review despite being audited by the same auditor who affirmed the financial statements at issue in the instant administrative review. Petitioners note that the Insular Rattan statements are the only statements on the record that do not conform to this reporting requirement. Petitioners further argue that without the required disclosure, it is impossible to determine whether Insular Rattan may have received countervailable tax subsidies, which would disqualify it for use in the surrogate financial ratio calculations.
- Petitioners claim that the other Philippine producers used in the Preliminary Results or proposed to be used in these final results had labor-to-material cost ratios ranging from eight percent to over 200 percent, with an average of 59 percent.
- Fairmont asserts that Insular Rattan's financial statements are complete and in accordance with Philippine GAAP. Fairmont agrees with the Department's reasoning from the Preliminary Results that the financial statements of Insular Rattan are appropriate for calculating surrogate financial ratios because they have been audited.
- Fairmont argues that the labor-to-material cost ratios in Insular Rattan's financial statements are more comparable to Fairmont's labor-to-material cost ratios than Petitioners' purported industry average of 59 percent, which is made up of data from companies that should be excluded for a variety of reasons.[393] Fairmont contends that DGSR's direct labor to raw materials ratio was 11 percent[394] and TGSR's direct labor to raw materials ratio was 19 percent.[395]
- Fairmont cites to the ITC's final injury decision in the wooden bedroom furniture case, which found that the labor cost component of wooden bedroom furniture production in the PRC was very low (around ten percent).[396] As such, Fairmont argues that the low labor-to-material cost ratios are more representative of Chinese producers, like Fairmont.
- Fairmont also argues that Petitioners falsely claim that the financial statements of Insular Rattan are unusable because it is "impossible to disaggregate purchases of traded goods from purchases of other raw materials." Insular Rattan's financial statements provide line items for raw materials, work-in-process, and finished goods. Fairmont contends

From the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

[393] See Fairmont's Rebuttal Brief, Volume II, at Exhibit 2. Fairmont breaks down materials and labor costs by type.

[394] See Fairmont's June 15, 2009 submission at Exhibit D-17-2 at 4 (16,125,932/144,842,207 = 11%).

[395] See id., at 8 (11,723,972/61,719,919 = 19%).

[396] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5 (December 2004), available at <http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2003/wooden_bedroom_furniture/final/PDF/woodenbedroomfurniturefinal.pdf>.

that this shows that Insular Rattan's raw materials costs are not related to semi-finished or finished goods.

Department's Position:

We disagree with Petitioners. Lacking more specific evidence, a relatively low ratio of labor to raw material costs alone is not evidence that Insular Rattan is not the producer of the large majority of its shipments. The second largest asset listed in Insular Rattan's financial statements is machineries tools and equipment. Additionally, Insular Rattan incurs substantial overhead costs, which include factory supplies, fuel, light, water, and repairs and maintenance. Insular Rattan's financial statements also provide line items for raw materials, work-in-process, and finished goods, consistent with a manufacturer rather than a reseller.[397] Further, Insular Rattan's website discusses its manufacturing and skilled laborer's abilities and there is no indication that it resells any product.[398] Thus, record evidence supports a finding that Insular Rattan, like Fairmont, is a manufacturer with little retail operations.

Also, although Insular Rattan's financial statements do not list a line item for income taxes, they were audited, affirmed by the auditor to be prepared in accordance with the GAAP of the Philippines, and contain explanations of the company's accounting policies. The absence of a tax line item could be explained by other reasons, such as tax holidays provided by the government, and does not necessarily indicate that the statements are unreliable (also the Department does not rely on taxes in calculating financial ratios). We further disagree with Petitioners that the omission of a line item for income taxes indicates that items, such as subsidies found to be countervailable by the Department, were undisclosed in the financial statements. There is a large amount of information on the record regarding Insular Rattan and Petitioners have not cited to any evidence of subsidies received by Insular Rattan. While Insular Rattan's 2007 financial statements were rejected by the Department in the previous review because they did not contain notes or accounting policies and thus appeared incomplete[399] Insular Rattan's 2008 financial statements contain notes and accounting policies.[400] Accordingly, the Department finds that Insular Rattan's financial statements are sufficiently complete and reliable for use in calculating surrogate financial ratios.

[397] See Fairmont's January 12, 2009, submission at Exhibit 6.
[398] See id., at Exhibit 8.
[399] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14.
[400] See Fairmont's January 12, 2009, submission at Exhibit 6.

ii) Financial Statements Placed on the Record Prior to, but not Used in the Preliminary Results

a) Berbenwood Industries, Inc.

- Petitioners argue that the Department should include the financial statements of Berbenwood Industries Inc. (Berbenwood) in its calculation of surrogate financial ratios.
- Petitioners argue that the record now demonstrates that Berbenwood produces merchandise identical to subject merchandise and should, therefore, be used as a source for surrogate financial data for the final results. Specifically, Petitioners note that the supplier profile for Berbenwood in the Philippines Sourcing Report – Indoor & Outdoor Furniture, indicates that it manufactures wooden bedroom furniture from gmelina lumber as well as from birch, maple, and cherry veneers.[401] This report further indicates that Berbenwood's "best sellers are bedroom pieces."[402] Petitioners also note that pictures of Berbenwood's most popular products display a queen-size bed, nightstand, dresser, and armoire made of gmelina wood and maple veneers.[403]
- Petitioners disagree with Fairmont's contention that the Berbenwood's financial statements should be disregarded because their use could result in the double counting of certain labor expenses, which are listed on the Berbenwood's financial statements as "third party services." Petitioners argue that the Department rejected an identical argument in the second administrative review in this proceeding, and it used the financial statements of Berbenwood notwithstanding the "third party services."[404] Petitioners note that in the second administrative review, the Department found that Berbenwood's statements clearly accounted for direct labor and energy as separate line items, thus confirming that inclusion of the line item for "third party services" as manufacturing overhead would not result in double-counting.
- Petitioners also disagree with Fairmont's contention that Berbenwood's financial statements are inaccurate and unreliable because it is unclear whether an amount listed for "revenue from rendering of services," which was not treated as "income" on the income statement, might instead be classified as an offset to finance costs.[405] Petitioners contend that there is no basis for assuming that this item would be accounted for as part of financial expense, and that it more likely that COGS, or general and administrative

[401] See Petitioners' March 4, 2010 submission at Attachment 1-A at 30 (Philippines Sourcing Report – Indoor & Outdoor Furniture (December 2008)). Berbenwood "has its own kiln-drying machine that is capable of processing 200,000 board feet of lumber." See id. This further shows that the company makes furniture from solid wood inputs.
[402] See id.
[403] See id. at Attachment 1-A at 31, 1-B, 1-C, and 1-D (containing various websites showing that Berbenwood manufactures wooden bedroom furniture).
[404] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 11.
[405] See Fairmont's January 19, 2010 submission at 4-5. See also Petitioners' January 14, 2010 submission at Attachment 1 (Berbenwood's 2008 financial statements at note 16).

expenses already are stated net of the services revenue.[406] Petitioners further note that Department's practice is not to look behind the financial statements, but rather to accept the line items on an "as is" basis.[407]

- Fairmont argues that the Department should not use the financial statements of Berbenwood because its "third party services" are significantly greater than its "personnel expenses." Fairmont notes that Berbenwood's financial statements list no work-in-process inventory but do list finished goods inventory, suggesting that its third-party suppliers provide finished goods for Berbenwood to resell. Fairmont contrasts this with the operations of DGSR and TCSR, which are production entities and do not resell finished third party products like Berbenwood's financials suggest that it does. Fairmont argues that third party service provider costs likely include manufacturing overhead and SG&A expenses. Fairmont further argues that "{w}here third party services are over one and a half times the size of personnel expenses (assuming here that personnel expenses are direct labor expenses), like they are here, there will be error in the allocation of third party services."
- Fairmont argues that Berbenwood's financial statements do not provide information in sufficient detail and in places are incomplete or inaccurate. Fairmont notes that Berbenwood does not provide a breakdown of raw materials costs (i.e., beginning inventory, purchases, and ending inventory) under COGS or inventory, which it claims makes it difficult to determine whether Berbenwood is actually producing significant quantities of wooden bedroom furniture and prevents Fairmont from verifying whether Berbenwood is a full-fledged producer or just merely engaged in minimal manufacturing processes, such as finishing.[408] Fairmont argues that the absence of a line item for work-in-process suggests that the line item for supplies and raw materials may include work-in-process. Thus, Fairmont argues that the information in the financial statements weighs more heavily in favor of the conclusion that Berbenwood has significant reselling operations.
- Fairmont also argues that Berbenwood's financial statements suffer from the following flaws: (1) 2007 administrative expenses do not match with administrative expenses in the notes to the financial statements, which calls into question the reliability of the statements; (2) no inventories were recorded in 2007; (3) the company has line items for rendering services that significantly affect SG&A costs (e.g., rendering services, construction contracts, and property rental); (4) the income statement does not include interest income, which affects the calculation of profit; and (5) there was an overstated depreciation expense in 2007, which may have had an effect on the 2008 depreciation value.

[406] See Petitioners' January 14, 2010 submission following Fairmont's January 13, 2010 submission at Attachment 1 (Berbenwood's 2008 financial statements at notes 17 and 18).
[407] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 15, at 47.
[408] All other proposed surrogates that allegedly produce wooden furniture have work-in-process line items.

- Fairmont further argues that Berbenwood's financial statements should be rejected because Berbenwood's profit ratio is aberrational in comparison to the other companies on the record.[409]

Department's Position:

We have used Berbenwood's financial statements in calculating surrogate financial ratios. As an initial matter, evidence supports finding that Berbenwood manufactured wooden bedroom furniture. Berbenwood's website stating that it is "one of the leading manufacturers of quality furniture finely crafted from wood . . . "and "is known for creating bedroom . . . furniture" sufficiently demonstrates that it manufacturers wooden bedroom furniture.[410] Petitioners have also placed on the record pictures from various websites showing that Berbenwood is a manufacturer of wooden bedroom furniture.[411] Fairmont cited no direct evidence that Berbenwood purchases and then resells any finished goods. Third party services account for less than 20 percent of Berbenwood's COGS.[412] This contrasts with its raw materials, electricity, water, and labor costs accounting for approximately 70 percent of its COGS.[413] This supports a conclusion that Berbenwood produces a significant amount of its wooden bedroom furniture onsite. Further, Berbenwood itemizes revenue by source and did not identify revenue from purchased finished goods;[414] in Berbenwood's COGS notes, it similarly does not note any purchased finished goods.[415] Additionally, the largest asset listed in Berbenwood's financial statements is "Machineries Tools & Equipment."[416] Further, Berbenwood incurs substantial overhead costs, which include repairs and maintenance, gasoline and oil, light, water, and depreciation.[417] Berbenwood's financial statements also provide line items for raw materials.[418] These are all items normally contained in the financial statements of manufacturers rather than resellers.

While Berbenwood receives a significant amount of third party services, Fairmont also receives significant third party services from 17 different tollers of its veneered boards, bon feet, and curve panels.[419] Therefore, this is no basis for rejecting Berbenwood's financial statements. Although Fairmont claims that "{w}here third party services are over one and a half times the size of personnel expenses (assuming here that personnel expenses are direct labor expenses), like they are here, there will be error in the allocation of third party services," it has not

[409] Only Design Ligna has a higher profit ratio, which is fully due to income from the sale of a large investment in 2008.
[410] See Petitioners' March 4, 2010 submission at Exhibit 1B.
[411] See id. at Attachment 1-A at 31, 1-B, 1-C, and 1-D (containing various websites showing that Berbenwood manufactures wooden bedroom furniture).
[412] See Petitioners' January 14, 2010 submission at Exhibit 1 at note 17.
[413] See id.
[414] See id. at note 16.
[415] See id. at note 17.
[416] See id. at 6.
[417] See id. at note 18.
[418] See id. at note 10.
[419] See Fairmont's May 27, 2009 Section A response at Exhibit A-6.d.

explained why this is the case. Berbenwood's financial statements account for direct labor, materials and energy as separate line items,[420] thus, consistent with our practice,[421] we have treated the third party expenses of Berbenwood as manufacturing overhead costs.

We disagree that Berbenwood's financial statements are flawed and, therefore, should not be relied upon. Fairmont lists five deficiencies that it claims are reasons for not basing surrogate financial ratios on Berbenwood's financial statements. Three of Fairmont's noted deficiencies concern 2007, rather than the POR. While 2007 Administrative Expenses listed in the income statement differed by a small amount from the corresponding amount in the notes to the financial statement, this error did not occur in 2008 and thus had no impact on expenses in the POR. Further, we do not believe such a small error renders the financial statements unreliable. The purported depreciation error accounted for 0.3 percent of the 2007 COM. While Fairmont has noted that no inventories were listed in 2007, Fairmont has not demonstrated this is an error or otherwise renders the accounting documents unreliable. The financial statements were certified by a certified public accountant that they were prepared in accordance with Philippine GAAP. One alleged "flaw" is that "the company has line items for rendering services that significantly affect SG&A costs (e.g., rendering services, construction contracts, and property rental)," but Fairmont failed to explain why this is a "flaw" that renders Berbenwood's income statement unreliable. Fairmont similarly notes that "the income statement does not include interest income, which affects the calculation of profit." Fairmont fails to present evidence that Berbenwood actually received any interest income, thus there is no evidence that the omission of interest income was an error. Fairmont also fails to explain why this omission renders Berbenwood's income statement unreliable.

Lastly, Fairmont has not adequately demonstrated that Berbenwood's financial statements should not be used. Although Fairmont argues that Berbenwood's profit ratio is aberrational because it is high, Berbenwood's profit ratio is less than a percentage point higher than the next highest profit ratio being used to calculate these final results. Additionally, Fairmont has not provided sufficient evidence to exclude Berbenwood's financial statements in this case because it has not demonstrated that Berbenwood's profit ratio results from unusual or unique circumstances such that one would consider it aberrational. The Department has previously noted "that the existence of higher prices alone does not necessarily indicate that price data are distorted or misrepresented. Thus, the existence of a higher price is not sufficient to exclude a particular surrogate value, absent specific evidence that the value is otherwise abnormal or unreliable."[422] The rationale is analogous to financial ratios and we find the policy equally applicable to

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[420] See Petitioners January 14, 2010 submission at Exhibit 1.

[421] See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) (Crawfish from the PRC), and accompanying Issues and Decision Memorandum at Comment 1.

[422] See e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1. See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6.

Fairmont's argument. Accordingly, we have continued to use Berbenwood's financial statements in our financial ratio calculation.

b) Las Palmas Furniture, Inc.

- Petitioners argue that the Department should include the financial statement of Las Palmas Furniture, Inc. (Las Palmas) in its calculation of surrogate financial ratios.
- Petitioners argue that the record of the instant administrative review, developed after the Preliminary Results, clearly indicates that Las Palmas produces "merchandise identical to subject merchandise."[423] Petitioners state that the company's website displays pictures of wooden beds and bedroom sets produced by Las Palmas.[424]
- Petitioners argue that Las Palmas, like Fairmont, does substantial selling to the hotel industry. Petitioners also state that the record shows that Las Palmas manufactures wooden armoires.[425]
- Fairmont notes that Las Palmas' factory supplies are nearly a third of the size of its raw material costs and, therefore, it appears that Las Palmas includes some of its raw material inputs under production supplies. Fairmont argues that to avoid double counting, the Department should include Las Palmas' factory supplies under raw material costs. Similarly, Fairmont also argues that the Department should include Las Palmas' subcontracting labor under labor to avoid double counting Fairmont's labor inputs.

Department's Position:

We have used Las Palmas' financial statements in our calculation of surrogate financial ratios for these final results of review and treated subcontracting labor as a direct labor expense but we have not treated factory supplies as a direct material expense. Las Palmas describes itself as a furniture manufacturer[426] and its website contains numerous pictures of wooden bedroom furniture.[427] Thus, the evidence demonstrates that Las Palmas is a producer of wooden bedroom furniture. However, as noted in the General Issues section above, just because overhead line items are "large compared to the line items of raw materials for some surrogate companies does not demonstrate the specific costs in these line-items, and therefore does not provide a basis for the Department to exclude costs that may be double-counted without also excluding costs that

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[423] Fairmont, in its post-preliminary SVs submission, submitted information regarding Las Palmas' showroom. See Fairmont's March 4, 2010 submission at Exhibit 8C. As the Department determined in the final results of the previous review, however, the fact that Las Palmas has a showroom does not mean that it engages in retail operations, because the showroom "may just as readily pertain to sales at wholesale customers." See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14, at 43. Indeed, Heritage Muebles Mirabile Export Inc., another Philippine manufacturer, states that its showroom is not for retail customers. See also Petitioners' March 4, 2010 submission at Attachment 8-B, at 1.
[424] See Petitioners' March 15, 2010 submission at Attachment 15 at 1-8.
[425] See Petitioners' March 4, 2010 submission at Attachment 2-A.
[426] See id., at Attachment 2-C.
[427] See id., at Attachment 2-B and Petitioners' March 15, 2010 submission at Attachment 15, at 1-8.

are not accounted for elsewhere."[428] Therefore, we have not treated factory supplies as a direct material expense. Also, both TCSR and DGSR reported significant manufacturing overhead costs in their own accounting records and these are in addition to inputs reported by Fairmont as FOPs. Nonetheless, because the subcontracting labor expense of Las Palmas is unmistakably related to labor, as stated in the financial statement,[429] we have not included it in overhead cost, but rather classify it as labor. This is consistent with the treatment of Las Palmas in the previous review of this order.[430]

c) Diretso Design Furnitures, Inc.

- Petitioners argue that the Department should include the financial statements of Diretso Design Furnitures, Inc. (Diretso) in its calculation of surrogate financial ratios.
- Petitioners argue that the record developed after the Preliminary Results establishes that Diretso produces "merchandise identical to subject merchandise." Petitioners acknowledge that information they submitted from Diretso's website prior to the Preliminary Results, did not establish that the company produced wooden bedroom furniture;[431] however, Petitioners contend that additional information submitted after the Preliminary Results shows that Diretso makes wooden "bed{s}" and "bed side" tables.[432]
- Fairmont argues that the Department should not use the financial statements of Diretso because there is no evidence that Diretso produces wooden bedroom furniture. Fairmont argues that Petitioners provided two drawings from Diretso's website of bedroom products that may or may not be made of wood.[433] Fairmont also argues that these two products were made for a reality television show in the Philippines and other than the production of these two items, Petitioners have not shown that Diretso regularly produces wooden bedroom furniture.
- Fairmont further argues that it appears that Diretso primarily produces chairs from abaca fibers, a product similar to rattan.[434]
- Fairmont notes that the only other products that Petitioners have shown to be wooden furniture are three wooden living and dining room product lines from a Diretso catalogue.[435] Fairmont argues that if Diretso actually produced wooden bedroom furniture, one would expect this information to be in the product catalogue and Petitioners should provide this information.

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[428] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 16, at 54.
[429] See Petitioners' September 11, 2009 submission at Exhibit 4 note 11.
[430] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 16.
[431] See Petitioners' September 11, 2009 submission at Attachment 14.
[432] See Petitioners' March 4, 2010 submission at Attachment 3.
[433] See id.
[434] See Fairmont's March 15, 2010 submission at Exhibit 1 at 4.
[435] See Petitioners' September 11, 2009 submission at Attachment 14.

Department's Position:

We have included Diretso's financial statements in our calculation of surrogate financial ratios for these final results. Diretso's website advertises what appear to be wooden beds and bedside tables and describes the company as a furniture manufacturer.[436] While Fairmont claims that the pictures of the website do not demonstrate that the beds and bedside tables are made of wood and that these products were made for a television program, the wood grain of the bed can be seen in the pictures of the bed on Diretso's website. Further, the bedside tables appear to be made from wood.[437] The bedside tables are much thicker than rattan or bamboo and appear to be constructed from multi fiberboard.[438] In addition, as Fairmont itself noted, other Diretso furniture (living and dining room furniture) consists of wood. Also, Fairmont is making an unsupported deduction that because a bed and bedside table were advertised as being products used in a television program, they were in fact made solely for the television program. Even if true, Fairmont makes no claim that these subject products are not in production. While Fairmont may be correct that Diretso primarily produces chairs from abaca fibers, Diretso's website also describe its wooden furniture as having wooden features such as wooden frames, walnut finishes, and rosewood veneers.

d) Coast Pacific Manufacturing Corp.

- Petitioners argue that the Department should include the financial statements of Coast Pacific Manufacturing Corp. (Coast Pacific) in its calculation of surrogate financial ratios.
- Petitioners state that the record developed after the Preliminary Results establishes that Coast Pacific produces "merchandise identical to subject merchandise." Petitioners note that this information indicates that Coast Pacific produces a wooden bed.
- Petitioners also argue that like Fairmont, Coast Pacific, "works with clients in the hotel and hospitality business."[439]
- Fairmont argues that the Department should not use the financial statements of Coast Pacific because approximately 15 percent of its income is derived from rent. If the Department decides to use the financial statements of Coast Pacific, Fairmont contends that it should exclude all line items under "Cost of Services" because these do not relate to Coast Pacific's furniture manufacturing business but to its rental business and other services.

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[436] See Petitioners' March 4, 2010 submission at Attachment 3.
[437] See id.
[438] Bedroom furniture made from engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard are expressly included in the scope of the order.
[439] See Fairmont's November 12, 2009 submission at Exhibit 18.

Department's Position:

We have included Coast Pacific's financial statements in our calculation of surrogate financial ratios for these final results of review. Coast Pacific's website advertises wooden beds and describes the company as a furniture manufacturer[440] and thus the record indicates that this company is a manufacturer of wooden bedroom furniture. Fairmont has not explained why the existence of rent income in Coast Pacific's financial statements should exclude it as a surrogate. Because Coast Pacific receives 85 percent of its income from furniture sales, the Department finds it sufficiently comparable to Fairmont. Lastly, Fairmont has not identified any information in Coast Pacific's financial statement to indicate that the items under cost of sales/service are related to rental income rather than the manufacturing operations of the company. The items listed under cost of sales/service in Coast Pacific's income statement consist entirely of raw materials, labor and manufacturing overhead[441] and no items for rental income are listed.[442] Accordingly, there is no basis to exclude all line items under Cost of Services from the surrogate financial ratio.

e) Maitland-Smith Cebu, Inc.

- Petitioners argue that the Department should include the financial statements of Maitland-Smith Cebu, Inc (Maitland-Smith) in its calculation of surrogate financial ratios.
- Petitioners note that ship manifest information they submitted after the Preliminary Results indicates that merchandise imported from Maitland-Smith is comprised of wooden bedroom furniture.[443] Thus, Petitioners contend that the record now demonstrates that Maitland-Smith produces wooden bedroom furniture in the Philippines.
- Fairmont argues that the Department should exclude the financial statements of Maitland-Smith from the calculation of surrogate financial ratios because Maitland-Smith receives a tax holiday/exemption for operating in an export zone.[444]
- Fairmont also argues that Maitland-Smith has an unrepresentative manufacturing overhead ratio due the classification of production supplies as manufacturing overhead rather than as raw materials.
- Fairmont contends that Maitland-Smith has large outside services recorded under COGS, which should be valued under direct labor in order to prevent the double counting of the labor expenses used to produce semi-finished or finished furniture products.

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[440] See Petitioners' March 4, 2010 submission at Attachment 4.
[441] See e.g., Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 42386 (August 2, 2007) and accompanying Issues and Decision Memorandum at Comment 3 (noting that the Department examines a surrogate financial statement to determine whether an item relates to the principal operations of the company).
[442] See Fairmont's November 12, 2009 submission at Exhibit 16 note 9.
[443] See Petitioners' March 15, 2010 submission at Attachment 16. See also Petitioners' March 4, 2010 submission at Attachment 11-B at 3-9.
[444] See Fairmont's October 8, 2009 submission at Exhibit 8 (Maitland-Smith financial statements) and Exhibit 11 (Philippine Economic Zone Authority information on tax holiday/exemption).

- Fairmont notes that in 2007, Maitland-Smith reversed prior inventory write-downs, which would have an effect on 2008 beginning inventory (i.e., because it is the same as 2007 ending inventory). Fairmont cites the financial statements' note that the reversals of the write-downs are included as COGS. Fairmont contends that this reversal of the write-downs affects the calculation of items listed under Maitland-Smith's inventory schedule (i.e., finished goods, work-in-process, raw materials, and production supplies), which in turn will impact the calculation of its financial ratios.
- Fairmont further notes that Maitland-Smith also has significant related transactions with Maitland-Smith Indonesia which it believes calls into question whether Maitland-Smith actually produces wooden bedroom furniture or merely resells or performs only minimal manufacturing process, such as finishing Maitland-Smith Indonesia's products.
- Fairmont also notes that Maitland-Smith's outside services expenses are roughly 362 times its SG&A salaries and benefits expenses, which it believes suggests that Maitland-Smith is more of a contractor than a manufacturer of furniture products and along with the other issues discussed above indicates that Maitland-Smith is not an appropriate surrogate company for Fairmont.

Department's Position:

We have included Maitland-Smith's financial statements in our calculation of surrogate financial ratios. Maitland-Smith's website advertises wooden beds and describes the company as a furniture manufacturer.[445] Further, Petitioners placed on the record shipping information for 2008 indicating that merchandise imported from Maitland-Smith is comprised of wooden bedroom furniture.[446] Fairmont's claim that Maitland-Smith's related transactions with Maitland-Smith Indonesia call into question whether it produces wooden bedroom furniture is unsupported by the record. Maitland-Smith's total manufacturing costs are approximately 1.3 billion Philippine pesos (PHP), and almost 90 percent of this amount consists of raw materials, labor, production supplies, and energy costs; the remainder consists of miscellaneous costs typically incurred by manufacturers.[447] By contrast, its transactions with its Indonesian affiliate account for less than PHP 10 million, or less than one percent of its total manufacturing costs.[448] Moreover, the record does not support Fairmont's argument that Maitland-Smith's large outside services charges indicates it is not a manufacturer of furniture since Maitland-Smith's manufacturing costs are 22 times larger than its outside services charges and include such typical manufacturing costs as raw material, labor, electricity, water, depreciation and production supplies costs.[449] Thus the evidence demonstrates that this company is a manufacturer of wooden bedroom furniture.

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[445] See Fairmont's October 8, 2009 submission at Attachment 10.
[446] See Petitioners' March 15, 2010 submission at Attachment 16. See also Petitioners' March 4, 2010 submission at Attachment 11-B at 3-9.
[447] See Fairmont's October 8, 2009 submission at Exhibit 8 at note 12.
[448] See id. , at Exhibit 8.
[449] See id., at Exhibit 8 at 109.

What is more, Fairmont has failed to demonstrate that Maitland-Smith's financial statement is unusable. Fairmont has not explained why, nor cited precedent supporting a finding that, a tax holiday/exemption for operating in an export zone makes Maitland-Smith's financial statement unsuitable as a surrogate. Further, the tax holiday cited by Fairmont is not a subsidy that the Department has found countervailable. Additionally, Fairmont failed to explain how inventory write-downs in 2007 renders Maitland-Smith's 2008 financial ratios aberrational or otherwise unusable. A revaluation of inventory is not uncommon and Fairmont has not cited any case where a company revaluing inventory was a basis for the Department to exclude its financial statements from the surrogate financial ratios.

Lastly, as noted in the General Issues section above, just because overhead line items are "large compared to the line items of raw materials for some surrogate companies does not demonstrate the specific costs in these line-items, and therefore does not provide a basis for the Department to exclude costs that may be double-counted without also excluding costs that are not accounted for elsewhere."[450] Therefore, we have not treated factory supplies as a direct material expense. Both TCSR and DGSR reported significant manufacturing overhead costs in their own accounting records and these are in addition to inputs reported by Fairmont as FOPs. Furthermore, Fairmont has not demonstrated that the outside services reported under COGS, correspond to direct labor costs and thus there is no basis to treat them as such. Instead, we find that these outside services to be similar to third party expenses and consistent with our practice for third party expenses,[451] we have treated the outside services of Maitland-Smith as manufacturing overhead costs.

f) APY Cane

- Petitioners argue that the Department should include the financial statements of APY Cane in its calculation of surrogate financial ratios.
- Petitioners note that APY Cane's financial statements explain that the company "is engaged in manufacturing, exporting of furniture and accessories,[452] that it produces furniture from "wood,"[453] and it has a "bedroom" line of furniture.[454] Petitioners further assert that APY Cane is not a retailer,[455] and notes that there are numerous third-party retailer websites advertising wooden bedroom furniture items manufactured by APY Cane.[456]

[450] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 16, at 54.
[451] See Crawfish from the PRC, and accompanying Issues and Decision Memorandum at Comment 1.
[452] See Petitioners' March 4, 2010 submission at Attachment 5-A, note 1.
[453] See id. at Attachment 5-B, at 1.
[454] See id. at Attachment 5-B, at 2.
[455] See id. at Attachment 5-A, note 1. See also id. at Attachment 5-B at 1 (showing that 61 percent of the company's production is exported).
[456] See id. at Attachment 5-B at 3, 7, and 10 (showing wooden beds), and 8 (showing a matching wooden bed and night stand combination), and 9 (showing a wooden chest of drawers).

- Fairmont argues that the Department should not use the financial statements of APY Cane because its 2008 performance was aberrational. Fairmont notes that APY Cane's 2008 sales were less than half of its sales in 2007 and that its 2008 raw material consumption was over eight and a half times less in 2008 than it was in 2007.[457] Fairmont argues that this drop in raw material consumption had a significant impact on APY Cane's manufacturing overhead ratio, causing it to double from its previous year's value.
- Fairmont also argues that APY Cane has an extremely high SG&A ratio, which is either due to its poor economic performance or significant retail operations.[458] Fairmont argues that the fact that APY Cane only exports 61 percent of its products leaves open the possibility that it has significant selling operations within the Philippines.[459] Fairmont further notes that APY Cane also has a low raw materials to total expenses ratio, which suggests that it earns significant revenues from activities unrelated to production.[460]
- Fairmont cites to the ITC's final injury decision in the wooden bedroom furniture case, which found that the labor cost component of wooden bedroom furniture production in the PRC was very low (around 10 percent).[461] Fairmont argues that low labor-to-material cost ratios are more representative of Chinese producers, like Fairmont and that high labor-to-material cost ratios may indicate that a company is engaged in some other type of activity other than the production of wooden bedroom furniture. For example, a company with a high labor-to-material cost ratio, like APY Cane may suggest that the "direct labor" costs involve labor related to packing or finishing rather than for production. Fairmont also cites to Linea Furniture, Inc. ("Linea"), as an example of a company determined by the Department to have significant retail operations. Fairmont notes that Linea has a labor-to-material ratio of over 100 percent. Fairmont argues that the Department should thus exclude companies with exceptionally high labor-to-material ratios like APY Cane.
- Fairmont argues that the wooden bedroom furniture industry is a high variable-cost industry where unit raw materials, labor, and other variable costs are high relative to unit fixed costs.[462] Fairmont contends that in the United States, wooden bedroom furniture producers' variable costs averaged 76.4 percent of total production costs during January 2000 to June 2003,[463] and that raw material costs were the largest variable cost

[457] APY Cane's production fell from PHP 12,199,523 in 2007 to 1,371,296 in 2008.
[458] APY Cane has line items for entertainment, advertising, and commission suggesting that it may engage in retail sales. Even if it does not, neither DGSR nor TCSR engage in indirect selling operations. Both are purely manufacturing entities.
[459] See Petitioners' March 4, 2010 submission at Exhibit 5-B.
[460] See Fairmont's Rebuttal Brief, Volume II, at Exhibit 2.
[461] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5 (December 2004), available at <http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2003/wooden_bedroom_furniture/final/PDF/woodenbedroomfurniturefinal.pdf>.
[462] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at 16.
[463] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Preliminary), USITC Pub. No. 3743, at II-9. (January 2004).

accounting for about 50.7 percent of U.S. producers' total production costs.[464] Fairmont argues that it is reasonable to expect the percentage raw materials represent of total costs to be even greater in a country at a lower level of economic development stage than the United States because labor costs and administrative costs in these countries are significantly lower.[465] Fairmont concludes that companies with low raw materials to total expenses ratios, such as APY Cane, are not representative of a wooden bedroom furniture manufacturer and likely engage in other operations as well.[466]

Department's Position:

We have included APY Cane's financial statements in our calculation of surrogate financial ratios. APY Cane's 2008 financial statements state that the company "is engaged in manufacturing, exporting of furniture and accessories, [467] that it produces furniture from "wood,"[468] and it has a "bedroom" line of furniture.[469] Thus, we have determined that the company manufactured wooden bedroom furniture during the POR.

While we acknowledge that APY Cane's sales dropped by 55 percent in 2008, we note that there was an international economic downturn in 2008 and thus APY Cane's drop in sales does not necessarily highlight anything unique with respect to the company that would call into question the appropriateness of using APY Cane's 2008 financial statements to calculate an average financial ratio.

In addition, we disagree with Fairmont's position that the existence of domestic sales, a low raw material to total cost ratio, and a high labor to material cost ratio indicate APY Cane has retail operations or only finishes, rather than manufactures furniture. We do not find the fact that APY Cane makes domestic as well as export sales sufficient proof of significant retail operations. Likewise, we do not find APY Cane's low raw material costs sufficient proof of significant retail operations or of a company that only finishes, rather than manufactures furniture. APY Cane states in its website that it uses wood, rattan, wicker, iron and other natural materials in manufacturing its goods and it is presented at AsianBuyersGuide.com to be a manufacturer of several types of furniture.[470] Further, Fairmont has provided nothing from the internet, the company's financial statements, or any other source referencing any retail operations of APY Cane or noting that the company finishes, rather than manufactures furniture. Instead, record evidence demonstrates that APY Cane incurs the type of costs indicative of a manufacturer. The company maintained beginning and ending work in process and finished goods balances, and incurred manufacturing costs consisting almost entirely of raw materials, labor, light, power, gasoline, oil, and repair and maintenance costs. Further, the only depreciation cost noted in its

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[464] See id. at V-1.
[465] See e.g., Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5.
[466] See Fairmont's Rebuttal Brief, Volume II, at Exhibit 2.
[467] See Petitioners' March 4, 2010 submission at Attachment 5-A, note 1.
[468] See id. at Attachment 5-B, at 1.
[469] See id. at Attachment 5-B, at 2.
[470] See Petitioners' March 4, 2010 submission at Attachment 5-B

financial statements was for machinery and transportation equipment rather than office equipment, furniture, and a retail building, the types of depreciation that would normally be incurred by a retailer.[471] All of the above evidence sufficiently demonstrates that like Fairmont's factories, APY Cane is company focused on the manufacture of furniture. Fairmont has failed to demonstrate that APY Cane has retail operations, or lacks manufacturing operations that would make it not comparable to Fairmont's factories. Fairmont's reliance on the ITC's finding that Chinese manufacturers incur relatively low labor costs ignores the fact that China is a non-market economy country, where relationships between costs may be affected by factors other than normal market considerations. Fairmont's indirect evidence based on the ITC's general findings pertaining to low labor costs and the percentage of total costs which raw materials represent in a developing country are outweighed by the direct and specific evidence of APY Cane's manufacturing activities discussed above.

g) Clear Export

- Petitioners argue that the Department should include the financial statements of Clear Export in its calculation of surrogate financial ratios, noting that Clear Export's financial statements explain that the company is "engaged in the manufacturing and export business,"[472] and that its website indicates that it is a producer of "wood furniture."[473] Petitioners further note that one of Clear Export's "main product lines" is "bedroom furniture"[474] and that the website also depicts several styles of the company's wooden bedroom dressers.[475]
- Fairmont argues that the manufacturing overhead and SG&A ratios for Clear Export are extremely high due to the classification of factory supplies as manufacturing overhead. Fairmont asserts that some companies classify inputs used in the production of wooden furniture as factory supplies or indirect materials, such as glue, fasteners, and stain, and argue that companies like Clear Export that have high factory supplies to raw material ratios are more likely than not to classify certain direct materials as factory supplies. Fairmont argues that Clear Export is obviously in this category because it provides a factory supply line item for factory tools. Fairmont notes that after allocating factory supplies to raw materials, the financial ratios of Clear Export are comparable to the five financial statements found to be reasonable by the Department in the Preliminary Results.
- Fairmont notes that Clear Export is also engaged in other activities not related to the production of furniture, such as providing technical support services, computer aided drafting services, and construction services.[476] Fairmont states that these activities may contribute to Clear Export's high SG&A costs and justify the exclusion of this financial

[471] See id. at Attachment 5-A for all cites to Interior Craft's financial statements.
[472] See id. at Attachment 6-A at note 1.
[473] See id. at Attachment 6-B at 1.
[474] See id. at Attachment 6-B at 9.
[475] See id. at Attachment 6-B at 3-6.
[476] See Petitioners' March 4, 2010 Comments, at Attachment 6-B.

statement from the calculation of surrogate financial ratios, when there are already five reliable companies on the record.

- The Coalition claims that the relatively high combined overhead and general expense ratio calculated by Petitioners for Clear Export of 79 percent includes production supplies, which account for over 50 percent of the overhead ratio. The Coalition argues that Fairmont has reported virtually all materials as part of its FOP and thus the inclusion of production supplies in the overhead ratio results in double-counting of costs.
- The Coalition further notes that Clear Export has only two labor expense categories (direct labor and salaries) under operating expenses. As direct labor covers only the cost of the workers on the line itself, the Coalition deduces that the salary category logically includes not only the cost of the administrative staff, which it claims are properly included in the ratio, but also indirect labor, which Fairmont has included in its FOP.
- The Coalition also notes that Petitioners included in their calculation of Clear Export's general expense ratio the amount reported for "import and export expenses." The Coalition argues that both of these categories of expenses more than likely should be excluded from the financial ratio calculation (e.g., import duties) because they are included in the FOP (freight costs) or as a sales deduction (e.g., brokerage and freight costs). The Coalition claims that because of this item's incorrect inclusion in the financial ratio calculation, the Department should not consider Clear Export's financial statement in calculating the surrogate financial ratio.
- Petitioners argue that the Coalition provides no specific evidence to support its argument that Clear Export may include items in "production supplies" that are also reported in Fairmont's FOP response, which potentially would lead to double-counting. Petitioners note that the Department has stated where there is "no evidence in the surrogate financial statements that the costs associated with these line-items can be traced to a particular product or reflect the materials for which the respondent reported FOPs, we will follow our general practice and treat indirect materials as overhead in the calculation of the surrogate financial ratios."[477] Petitioners argue that the relative size of the "production supplies" line item is irrelevant. Petitioners contend that the Department previously has held that just because the "production supplies" item appears "large" it is no basis to conclude that use of the financial statements would result in double counting.[478]
- Petitioners argue that because the respondents provide no specific evidence of double-counting, the Department should adhere to its practice and should not exclude companies with "large" amounts reported for "production supplies."

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[477] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 16, at 53; see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 4 (treating "consumables consumed" as overhead, absent specific evidence that the consumables were traceable to specific direct materials).

[478] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 16, at 54.

- Petitioners contend that within "Cost of Goods Manufactured," Clear Export reports "direct labor," which encompasses all labor costs incurred at the factory, and is included in the denominator containing material, labor, and energy inputs. Petitioners argue that within "Operating Expenses," Clear Export reports "salaries and bonuses," which are SG&A salary costs[479] and is appropriately included in SG&A.
- Petitioners also argue that the Coalition's argument that Clear Export's "import and export expenses" should be excluded as movement expenses from SG&A has no bearing on whether Clear Export's financial statements should be used in the first place. Petitioners assert that the Department should include "import and export expenses" in SG&A because Clear Export separately accounts for "freight and handling" (which is appropriately excluded from SG&A), and there is no evidence that "import and export expenses" include movement costs.[480] Petitioners argue that in such instances, the Department practice is to include this item as SG&A.[481]

Department's Position:

We have included Clear Export's financial statements in our calculation of surrogate financial ratios. In Clear Export's financial statements it is reported that the company is "engaged in the manufacturing and export business,"[482] and its website indicates that it is a producer of "wood furniture,"[483] and that one of Clear Export's "main product lines" is "bedroom furniture."[484] Thus, the record indicates that Clear Export is a producer of wooden bedroom furniture. Fairmont mischaracterizes Clear Export's advertising of technical support services, computer aided drafting services, and construction services as activities not related to the production of furniture. Petitioners have demonstrated that Clear Export is promoting its ability to provide technical support, CAD drawings, and construction details for its furniture.[485] Therefore, there is no basis to conclude that Clear Export's operations are substantially dissimilar to those of other WBF producers.

Regarding the proper classification of certain expenses, as noted in the General Issues section above, just because overhead line items are "large compared to the line items of raw materials for some surrogate companies does not demonstrate the specific costs in these line-items, and

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[479] See id. at Attachment 6-A (footnote 13).
[480] See Petitioners' March 4, 2010 submission at Attachment 6-C.
[481] See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 2a ("The Department agrees with Petitioners that Core Carbon's 'export sales expenses' and Kalpalka's 'export expense' should not be recategorized from 'SG&A and Interest' to 'Excluded.'"); see also Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008), and accompanying Issues and Decision Memorandum at Comment 3 ("as export expenses have not been included elsewhere in our calculations of NV, we have included this line item in our calculation of the surrogate financial ratio for SG&A").
[482] See Petitioners' March 4, 2010 submission at Attachment 6-A at note 1.
[483] See id. at Attachment 6-B at 1.
[484] See id. at Attachment 6-B at 9.
[485] See id. at Attachment 6-B.

therefore does not provide a basis for the Department to exclude costs that may be double-counted without also excluding costs that are not accounted for elsewhere."[486] Therefore, we have not treated factory supplies as a direct material expense.

Also, as noted above, both TCSR and DGSR reported significant manufacturing overhead costs in their own accounting records and these are in addition to inputs reported by Fairmont as FOPs. Additionally, the Coalition has not provided any evidence as to how Clear Export defines "direct labor" or how it classifies indirect labor in the normal course of business and therefore there is no basis for concluding that the company necessarily classifies indirect labor relating to manufacturing operations as "salaries".

Finally, the Department disagrees that the existence of a category titled "import and export expenses" in Clear Export's financial statements is sufficient reason for excluding the company from consideration as a surrogate. Instead, this item should be properly classified. There is no detail in Clear Export's financial statement indicating that this expense is related to non-general operations of the company. Therefore, as import and export expenses have not been included elsewhere in our calculations of NV, we have included this line item in our calculation of the surrogate SG&A ratio. This is consistent with Department decisions in two other antidumping cases involving the PRC.[487]

h) Designs Ligna

- Petitioners argue that the Department should include the financial statements of Designs Ligna in its calculation of surrogate financial ratios.
- Petitioner argues that Design Ligna makes merchandise that is identical to the subject merchandise. Petitioners disagree with the Coalition's argument that there is no record evidence that Designs Ligna produces WBF. In support of its argument, Petitioners note that Design Ligna's website shows that it produces wooden beds, armoires, chests of drawers, and night tables.[488]
- Petitioners also argue that record evidence showing that Design Ligna has three showrooms[489] does not indicate that the company is a retailer. Petitioners argue the

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[486] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 16, at 54.
[487] See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 2a ("The Department agrees with Petitioners that Core Carbon's "export sales expenses" and Kalpalka's "export expense" should not be recategorized from "SG&A and Interest" to "Excluded"."); see also Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008), and accompanying Issues and Decision Memorandum at Comment 3 ("as export expenses have not been included elsewhere in our calculations of NV, we have included this line item in our calculation of the surrogate financial ratio for SG&A").
[488] See Petitioners' March 25, 2010 submission at Attachment 1; see Petitioners' March 4, 2010 submission at Attachment 7-B at 7-9; see also Fairmont's March 29, 2010 submission at Exhibit 3.
[489] See Fairmont's March 29, 2010 submission at Exhibit 3at 20.

record demonstrates that Design Ligna's showrooms display furniture for wholesale customers, and that there is no evidence that these showrooms are used for retail purposes.

- Fairmont argues that the Department should not use the financial statements of Designs Ligna to calculate surrogate financial ratios because Designs Ligna downsized its operations significantly in 2008 and only made a profit because of the sale of an investment and the laying off of workers. Fairmont notes that in 2008, Designs Ligna earned a profit of PHP 8,232,075, but that all of this profit is attributable to Designs Ligna's income from the sale of an investment of PHP 13,125,000, resulting in a profit ratio of over 10 percent, which is significantly higher than all of the other potential surrogate companies on the record.
- Fairmont also argues that Design Ligna's SG&A ratio in 2008 is inflated by a spike in retirement costs, which Fairmont believes is likely due to the company's downsizing. Fairmont states that in 2008, the company's retirement expenses were PHP 6,062,875, nearly nine times its 2007 retirement expenses of PHP 684,300.
- Fairmont further argues that Designs Ligna is also engaged in retail sales, through the operation of three showrooms in the Philippines. Fairmont also notes that Petitioners' claim that the "existence of such showrooms does not indicate that the company is a retailer, because a showroom "may just as readily pertain to sales at wholesale customers,"[490] does not reference the fact that the showrooms are in large retail malls. Fairmont contends that a reasonable business would not locate a wholesale showroom in retail center such as a mall, which has much higher rental costs than a showroom in a mixed commercial/industrial area. Fairmont further notes that DGSR and TCSR are purely manufacturing entities that do not have showrooms for retail or wholesale customers.

Department's Position:

As stated above, and consistent with the Preliminary Results, we will not include the financial statements of any company that maintains significant retail operations outside of the factory in calculating surrogate financial ratios because we have no evidence that Fairmont's factories have significant retail operations. Design Ligna's website identifies three showrooms, all of which are located in shopping malls.[491] We agree with Fairmont that the location of these showrooms in shopping malls supports a finding that these showrooms are related to retail, not wholesale operations. Thus, we have determined that the company does maintain significant retail operations outside of its factory and have not used Design Ligna's financial statements in calculating surrogate financial ratios.

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[490] See Petitioners' Case Brief at 15.
[491] See Fairmont's March 29, 2010 submission at Exhibit 3at 20.

i) Heritage

- Petitioners argue that the Department should include the financial statements of Heritage in its calculation of surrogate financial ratios.
- Petitioners argue that Heritage is a manufacturer and exporter of wooden furniture[492] that has an online product catalog depicting numerous wooden bedroom furniture products.[493] Petitioners also state that, although Heritage maintains a showroom for these products, the company does not engage in retail sales.[494]
- Fairmont argues that because Heritage's factory supplies to raw materials ratio is the second highest among the wooden bedroom furniture producers on the record,[495] Heritage's factory supplies must either include raw materials or Heritage's production experience is not comparable to that of Fairmont's.
- Fairmont cites to Heritage's website, which states that it uses the following materials: wrought iron, stone, fiberglass, stone cast, and rattan.[496] Fairmont notes that this website says nothing about producing wooden furniture let alone wooden bedroom furniture. Fairmont also states that although the website shows pictures of wooden bedroom products it is possible that Heritage purchases semi-finished wooden products and finishes them using the materials listed above. Fairmont argues that this is plausible given that a majority of the items on Heritage's website are stone and wrought iron products. Fairmont argues that such types of goods have different production processes and likely require more tools and factory supplies than the production of wooden furniture.

Department's Position:

We have included Heritage's financial statements in our calculation of surrogate financial ratios. On its website Heritage states that it manufactures "wood-finish furniture," and its online product catalog depicts numerous wooden bedroom furniture products such as beds, dressers, and armoires.[497] Thus, the record indicates that the company is a manufacturer of wooden bedroom furniture. While Fairmont has noted that Heritage's website specifically mentions producing furniture from wrought iron, stone, fiberglass, stone cast, and rattan, omitting any mention of wood as a material input, Heritage's website also explicitly states that it does make wooden furniture and includes many designs of various types of wooden bedroom furniture.[498] Fairmont's speculative conclusion that Heritage purchases semi-finished wooden products and

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[492] See Petitioners' March 4, 2010 submission at Attachment 8-A, note 1 and Schedule 2 (statement of manufacturing costs).
[493] See id. at Attachment 8-B.
[494] See id. at Attachment 8-B at 1.
[495] Fairmont argues that if the Department uses the financial statements of Heritage, it should allocate factory supplies to raw materials.
[496] See Fairmont's March 15, 2010 submission, resubmitted on March 29, 2010, at Exhibit 4 at 91.
[497] See id. at Attachment 8-B.
[498] See Petitioners' March 4, 2010 submission at Attachment 8-B. Heritage's website notes that it has "wood finish" furniture and then proceeds to list several items such beds and armoires that "define the Heritage style."

finishes them using the materials listed above, is unsupported by Heritage's financial statements that identify no third-party services, tolling arrangements, or purchases of semi-finished goods.[499] Moreover, there is no information in the financial statements or elsewhere on the record that supports Fairmount's claim that Heritage uses more non-wood inputs than wood in producing furniture. As stated above, we have not excluded from consideration wooden bedroom furniture manufacturers that make other types of furniture.

As noted in the General Issues section above, just because overhead line items are "large compared to the line items of raw materials for some surrogate companies does not demonstrate the specific costs in these line-items, and therefore does not provide a basis for the Department to exclude costs that may be double-counted without also excluding costs that are not accounted for elsewhere."[500] Therefore, we have not treated factory supplies as a direct material expense.

Also, as noted above, both TCSR and DGSR reported significant manufacturing overhead costs in their own accounting records and these are in addition to inputs reported by Fairmont as FOPs.

j) Interior Crafts of the Islands, Inc.

- Petitioners argue that the Department should include the financial statements of Interior Crafts of the Islands, Inc. (Interior Crafts) in its calculation of surrogate financial ratios.
- Petitioners claim that despite the arguments of the Coalition, Interior Crafts manufactures wooden bedroom furniture. Petitioners argue that record evidence disproves the Coalition's claim that Interior Crafts makes furniture solely from "palms, seagrasses, bamboo, abaca, and rattan." Specifically, Petitioners note that the record indicates that Interior Crafts manufactures wooden bedroom furniture from fiberboard, a material that is listed among those included within the scope of the order.
- Fairmont argues that the financial statements of Interior Crafts should not be used in the calculation of surrogate financial ratios as these statements indicate that the company is engaged in retail sales, which is further confirmed by the company's high SG&A ratios.[501]
- Fairmont also notes that a line item under personnel costs in Note 10 is blacked out and that the subtotal under this line item is greater than the sum of the line items, thus demonstrating that there is missing information in the financial statements. Fairmont also argues that personnel costs are an element of the income statement and required in the calculation of surrogate financial ratios and, therefore, Interior Crafts' financial statements are incomplete.

[499] See Petitioners' March 4, 2010 submission at Attachment 8-B.
[500] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 16, at 54.
[501] See Petitioners' March 4, 2010 submission at Attachment 9A (under Notes to Financial Statements "Corporate Information").

- Fairmont cites the ITC's final injury decision in the wooden bedroom furniture case, which found that the labor cost component of wooden bedroom furniture production in the PRC was very low (around 10 percent).[502] Fairmont argues that low labor-to-material cost ratios are more representative of Chinese producers, like Fairmont and that high labor-to-material cost ratios may indicate that a company is engaged in some other type of activity other than the production of wooden bedroom furniture. For example, a company with a high labor-to-material cost ratio may suggest that the "direct labor" costs involve labor related to packing or finishing rather than for production. Fairmont also cites Linea as an example of a company determined by the Department to have significant retail operations. Fairmont notes that Linea has a labor-to-material ratio of over 100 percent. Fairmont argues that the Department should thus exclude companies with exceptionally high labor-to-material ratios like Interior Crafts.
- Fairmont also argues that the financial statements of Interior Crafts should be rejected because they have a very low raw material to total expense ratio, suggesting that it produces very few goods and is in the business of selling finished products. Fairmont also notes that raw material costs should be the majority of a wooden bedroom furniture company's costs but Interior Crafts' SG&A expenses exceed its raw material expenses.
- Fairmont further argues that the wooden bedroom furniture industry is a high variable-cost industry where unit raw materials, labor, and other variable costs are high relative to unit fixed costs.[503] Fairmont contends that in the United States, wooden bedroom furniture producers' variable costs averaged 76.4 percent of total production costs during January 2000 to June 2003,[504] and that raw material costs were the largest variable cost accounting for about 50.7 percent of U.S. producers' total production costs.[505] Fairmont argues that a reasonable expectation would be for the percentage of raw materials to total costs to be even greater in a country that is at a lower level of economic development than the United States because labor costs and administrative costs in these countries are significantly lower.[506] Fairmont thus argues that countries with low raw materials to total expenses ratios are not representative of a wooden bedroom furniture manufacturer and likely engage in other operations as well, which is likely the case with Interior Crafts.[507]

Department's Position:

We have included Interior Craft's financial statements in our calculation of surrogate financial ratios. It is stated on Interior Craft's website that its product lines include bedroom furniture and product brochures at the website indicate that its beds, night tables, and dressers are made from

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[502] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5 (December 2004), available at <http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2003/wooden_bedroom_furniture/final/PDF/woodenbedroomfurniturefinal.pdf>.
[503] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at 16.
[504] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Preliminary), USITC Pub. No. 3743, at II-9. (January 2004).
[505] See id. at V-1.
[506] See e.g., Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5.
[507] See Fairmont's Rebuttal Brief, Volume II, at Exhibit 2.

fiberboard[508] and that its beds are made on a wooden frame.[509] Thus, the record demonstrates that Interior Craft is a producer of wooden bedroom furniture.

Fairmont has mischaracterized Interior Craft's statement in the corporate information section of its financial statements that it sells furniture "to distribute whether wholesale or retail, household furniture made of wood . . ." as Interior Craft stating that it engages in retail operations. Rather, the statement suggests that Interior Craft is indicating that it will sell to wholesalers or retailers. Moreover, other than this statement, Fairmont has not cited any evidence that Interior Craft has retail operations, even though the website and financial statements on the record contain a significant amount of information regarding Interior Craft's operations and none of this information indicates that the company has retail activities.

Moreover, we disagree with Fairmont's claims that Interior Crafts' low raw materials cost relative to both its SG&A and total expenses, and relatively high labor cost, suggest that it produces very few goods and is in the business of selling finished products. Fairmont fails to cite any evidence that Interior Crafts is not manufacturing the goods that it sells. Interior Crafts maintained beginning and ending work in process balances, demonstrating that it manufactures rather than merely resells products.[510] Further, machinery and tools equipment depreciation accounts for over 60 percent of its total depreciation costs. These facts demonstrate that Fairmont's claim that Interior Craft is a reseller and retailer is without merit.

Fairmont's reliance on the ITC's finding that Chinese manufacturers incur relatively low labor costs ignores the fact that the PRC is an NME, where relationships between costs may be affected by factors other than normal market considerations. Fairmont's indirect evidence based on the ITC's general findings pertaining to low labor costs and the percentage of total costs which raw materials represent in a developing country are outweighed by the direct and specific evidence of Interior Crafts' manufacturing activities discussed above.

Finally, although Fairmont contends that Interior Craft's financial statements are incomplete because a line item under personnel costs in Note 10 is blacked out; this item is merely highlighted and it is discernable. The item is retirement costs accounting for PHP 153,101.67. Thus, we do not agree with Fairmont that Interior Craft's financial statement is incomplete.

k) Mastercraft

- Petitioners argue that the Department should include the financial statements of Mastercraft in its calculation of surrogate financial ratios.

[508] See the scope of the concurrent final results, which identifies fiberboard as a wood item from which scope merchandise is manufactured.
[509] See Petitioners' March 4, 2010 submission at Attachment 9B.
[510] See Petitioners' March 4, 2010 submission at Attachment 9A for all cites to Interior Craft's financial statements.

- Petitioners contend that Mastercraft is a wooden furniture manufacturer that is a subsidiary of the holding company, Mendco.[511] Petitioners claim that while Mendco has one other operating subsidiary, which produces certain metal goods, it has no other subsidiaries other than Mastercraft that manufacture or sell wooden furniture. Petitioners argue, therefore, that it is appropriate to use the unconsolidated financial statements that are specific to Mastercraft, the entity that manufactures wooden bedroom furniture products.
- Fairmont contends that Mastercraft's financial statements should not be used as it is an exporter of wrought iron furniture and not wooden furniture.[512] Fairmont notes that although a related party's website states that Mastercraft is a subsidiary of Mendco and produces wooden furniture[513] and Petitioners claim that the wooden beds on the related party's website are produced by Mastercraft, the information on Mastercraft's exhibition webpage, showcases wrought iron products, not wooden furniture.[514] Fairmont also notes that there is no evidence in Mastercraft or Mendco's financial statements of related party transactions, which suggests that the financial statements do not satisfy Philippine Financial Accounting Standard 24 or that Mendco does not sell wooden products produced by Mastercraft as Petitioners would have the Department believe. In fact, Mastercraft's financial statements explicitly state that it had no related party transactions in 2008.[515]
- Fairmont also argues that Mastercraft has very high manufacturing overhead expenses, which it believes either confirms that Mastercraft is a manufacturer of wrought iron products or that its factory supplies line item includes raw materials and should be classified under raw materials rather than manufacturing overhead.

Department's Position:

The Department is not using Mastercraft's financial statement to calculate surrogate financial ratios. Record evidence does not indicate that Mastercraft makes wooden bedroom furniture. While the website of Mastercraft's holding company Mendco states that its subsidiary Mastercraft supplies it with wooden furniture, accessories, and veneering,[516] Mastercraft's own financial statements only state that its "primary current business operation is engaged in the business of manufacturing, selling, distribution and exporting of stonecrafts, shellcrafts."[517] Nowhere in Mastercraft's own financial statements does it state that Mastercraft produces wooden bedroom furniture or wooden furniture. Given that there are 14 usable financial statements on the record from producers of wooden bedroom furniture, we do not believe that Mastercraft's financial statements constitute the best available information for calculating

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511 See id. at Attachment 10-B at 9.
512 See id. at Attachment 10A ("At present, the corporation is on exportation of wrought-iron furniture with customers from the United States of America, Middle East, etc.").
513 See id. at Attachment 10B.
514 See Fairmont's March 15, 2010 submission at Exhibit 6 at 306-311.
515 See Petitioners' March 4, 2010 submission at Attachment 10A.
516 See id. at Attachment 10B.
517 See id. at Attachment 10A, at Corporation Information under notes to financial statements.

financial ratios since we cannot determine whether it makes wooden bedroom furniture. Therefore, we have not used Mastercraft's financial statements in our financial ratio calculations.

l) Wicker & Vine, Inc.

- Petitioners argue that the Department should include the financial statements of Wicker & Vine, Inc. (Wicker & Vine) in its calculation of surrogate financial ratios.
- Petitioners note that a local furniture industry association webpage describes Wicker & Vine as a producer of indoor wooden furniture.[518]
- Petitioners also note that ship manifest information on the record of the instant administrative review indicates that merchandise imported from Wicker & Vine is comprised primarily of wooden bedroom furniture.[519]
- Fairmont contends that Wicker & Vine's operating expenses do not add up to the subtotal in Note 13 of its financial statements and that the discrepancy of PHP 1,681,401 is significant as it accounts for over 20 percent of Wicker & Vine's total SG&A expense. Thus, Fairmont argues that the Department should reject the financial statements of Wicker & Vine because they are incomplete. In the event the Department disagrees, Fairmont contends that the Department should treat Wicker & Vine's factory supplies line item as raw materials. Fairmont claims that if the Department does not do this, Wicker & Vine's manufacturing overhead would not be representative of the wooden bedroom furniture industry.
- Fairmont cites to the ITC's final injury decision in the wooden bedroom furniture case, which found that the labor cost component of wooden bedroom furniture production in the PRC was very low (around 10 percent).[520] Fairmont argues that low labor-to-material cost ratios are more representative of Chinese producers, like Fairmont and that high labor-to-material cost ratios may indicate that a company is engaged in some other type of activity other than the production of wooden bedroom furniture. For example, a company with a high labor-to-material cost ratio may suggest that the "direct labor" costs involve labor related to packing or finishing rather than for production. Fairmont also cites the Department's exclusion of the financial ratios of Linea in the Preliminary Results on the basis that it was found to have significant retail operations. Fairmont notes that Linea has a labor-to-material ratio of over 100 percent. Fairmont argues that the Department should thus exclude companies with exceptionally high labor-to-material ratios like Wicker & Vine.
- Fairmont further argues that the wooden bedroom furniture industry is a high variable-cost industry where unit raw materials, labor, and other variable costs are high relative to

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[518] See id. at 11-B, at 1.
[519] See id. at Attachment 11-B at 10-11. Petitioners also provide information about Import Genius and its information sources. See id. at Attachment 11-B and 3-9.
[520] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5 (December 2004), available at <http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2003/wooden_bedroom_furniture/final/PDF/woodenbedroomfurniturefinal.pdf>.

unit fixed costs.[521] Fairmont contends that in the United States, wooden bedroom furniture producers' variable costs averaged 76.4 percent of total production costs during January 2000 to June 2003, and that raw material costs were the largest variable cost accounting for about 50.7 percent of U.S. producers' total production costs.[522] Fairmont argues that a reasonable expectation would be for the percentage of raw materials to total costs to be even greater in a country that is at a lower level of economic development than the United States because labor costs and administrative costs in these countries are significantly lower.[523] Fairmont thus argues that companies with low raw materials to total expenses ratios are not representative of a wooden bedroom furniture manufacturer and likely engage in other operations as well, which is likely the case with Wicker & Vine.[524]

Department's Position:

We have included Wicker & Vine's financial statements in our calculation of surrogate financial ratios. Wicker & Vine's financial statements indicate it is a manufacturer,[525] and a local furniture industry association webpage describes Wicker & Vine as a producer of indoor wooden furniture. Petitioners have also placed on the record shipping manifests attributing numerous 2008 shipments of wooden bedroom furniture to Wicker & Vine.[526] Thus, the record indicates that Wicker & Vine is a producer of wooden bedroom furniture. Fairmont's suggestion that a high labor-to-material cost ratio may indicate that a company is engaged in some other type of activity other than the production of wooden bedroom furniture, such as retail operations, is unsupported by any evidence that Wicker & Vine actually engages any in activities outside of those it identified (i.e., manufacturing and exporting its goods). While the company did record work in process purchases, these are approximately five times less than the cost of self-manufactured goods. Machinery costs dominate its non-building, non-land depreciation costs and no retail facilities are listed in Wicker & Vine's depreciation schedule or identified elsewhere. Such costs are indicative of a manufacturer, rather than a retailer or a company that only finishes, rather than manufactures products.

Further, Wicker & Vine's labor costs account for less than 20 percent of its manufacturing costs. This ratio is not significantly different than the labor costs of other financial statements on the record.[527] Fairmont's reliance on the ITC's finding that Chinese manufacturers incur relatively low labor costs ignores the fact that the PRC is an NME country, where relationships between costs may be affected by factors other than normal market considerations. Fairmont's indirect evidence based on the ITC's general findings pertaining to low labor costs and the percentage of

[521] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at 16.
[522] See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Preliminary), USITC Pub. No. 3743, at II-9 at V-1 (January 2004).
[523] See e.g., Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743, at II-5.
[524] See Fairmont's Rebuttal Brief, Volume II, at Exhibit 2.
[525] See Petitioners' March 4, 2010 submission at 11-A, at notes to financial statements, corporate information.
[526] See id. at 11-B.
[527] See the Final Results Surrogate Value Memorandum.

total costs which raw materials represent in a developing country are outweighed by the direct and specific evidence of Wicker & Vine's manufacturing activities discussed above.

Lastly, although Fairmont questioned the completeness of Wicker & Vine's financial statements, these financial statements were audited by a certified public accountant. Further, the total at the bottom of the itemization at Note 13 (the Note questioned by Fairmont) of PHP 7,839,991 is listed in the income statement and Wicker & Vine paid taxes based on a net income that had been reduced by the total operating expenses of PHP 7,839,991, rather than the sum of the itemization at Note 13 of the company's financial statements.[528] Accordingly, we believe the total operating expenses listed in the income statement are accurate and have calculated the financial ratios accordingly.

iii) Overall

- Fairmont also argues that the Department should not use the financial statements of the following Philippine companies to calculate the surrogate financial ratios for Fairmont because these companies (1) do not produce wooden bedroom furniture and/or (2) their financial statements are unrepresentative of Fairmont or otherwise flawed: Ambiente Designs International, Inc. (Ambiente), City Cane Corporation (City Cane), Daniele Furniture Corporation (Daniele), Delco Wood Products Corporation (Delco), Mobilia Products, Inc. (Mobilia), and SS Dezign Plus, Inc. (SS Dezign).[529]
- Petitioners argue that the Department should use the financial statements of Ambiente, City Cane, Daniele, Mobilia, and SS Dezign because they produce wooden furniture, which is comparable to wooden bedroom furniture.
- Petitioners argue that we should calculate the financial ratios in accordance with their submitted worksheets.

Department's Position:

There is nothing on the record indicating that Ambiente, City Cane, Daniele, Delco, Mobilia, or SS Dezign produced wooden bedroom furniture. As explained above, because we have usable financial statements from producers that make at least some like-merchandise, we are not basing the financial ratios on data from producers which do not make wooden bedroom furniture. While Petitioners claim that City Cane Corporation produced wooden bedroom furniture, they do

[528] See Petitioners' March 4, 2010 submission at 11-A at the income statement and at note 14.
[529] Petitioners' proposed that the Department use the financial statements of Linea and Orient Deco Furniture Manufacturing, Inc. (Orient Deco) for the calculation of surrogate financial ratios in the Preliminary Results. See Petitioners' September 11, 2009 submission at 4-5. Petitioners do not propose that the Department use the financial statements of Linea or Orient Deco in the final results. Moreover, the Department rejected the financial statements of Linea due to Linea's retail operations. See Surrogate Value Memo at 15. The Department found that Orient Deco did not produce wooden bedroom furniture. See id. Orient Deco's financial statements are also not appropriate for the calculation of Fairmont's surrogate financial ratios for the reasons stated in Fairmont's Rebuttal to Petitioners' Pre-Preliminary Comments Regarding Surrogate Values and Surrogate Financial Ratios. See Fairmont's December 24, 2009 submission at 19-20.

not cite any specific information indicating that this company produced wooden bedroom furniture and we found no evidence that the company did so. Given that there are 14 usable financial statements on the record from companies that produced wooden bedroom furniture, we do not believe the financial statements of the six companies addressed above constitute the best available information for calculating financial ratios. Accordingly, we are not using them for the final results.

While Petitioners have stated that the Department should calculate financial ratios consistent with their submitted calculations, Petitioners have not cited any specific errors in the Department's calculation of the surrogate financial ratios from the Preliminary Results. Moreover, their calculation worksheets do not provide any descriptive narratives or explanations for their calculations.[530] Absent explanations for why their calculations are correct compared to the Department's calculations, there is no basis for modifying the Department's calculations to conform to those of Petitioners.

Summary

Parties have submitted 39 financial statements on the record of this review. We have explained why we are not using a total of 25 of these financial statements in the Preliminary Results and these final results. Thus, for these final results, we have determined to use the following 14 financial statements to calculate surrogate financial ratios:

Insular Rattan
Horizon
Arkane
Casa Cebuana Incorada
Berbenwood
Las Palmas
Diretso
Coast Pacific
Maitland-Smith
APY Cane
Clear Export
Heritage
Interior Craft
Wicker & Vine

Comment 31: Unreported Sales

At verification the Department identified 24 different types of unreported products that it determined were subject merchandise, which Fairmount sold to U.S. customers during the POR. The Department applied as AFA to these unreported sales a rate of 216.01 percent. Parties'

[530] See Petitioner Case Brief at 38-39.

arguments regarding this determination fall into three areas: (1) Whether certain unreported sales determined to be subject merchandise in the Preliminary Results are in fact subject merchandise. Due to the existence of pertinent proprietary information, discussion of this topic, is in a separate proprietary document.[531] (2) Whether AFA should have been applied to these unreported sales; and (3) Whether the AFA rate applied in the Preliminary Results was correctly chosen.

A. Whether the Department May Use Facts Available

- The Coalition argues that the Department should not employ facts available because Fairmont volunteered to provide the missing information.

Department's Position:

The Department disagrees with the Coalition. Section 776(a)(1) of the Act authorizes the Department to apply facts available when necessary information is not available on the record. Here, both the sales and FOP information for the sales in question were missing. Thus, the Department must rely on facts otherwise available. While Fairmont did offer to provide the missing sales and FOP information,[532] this was only after these unreported sales were discovered, after verification was complete, and after the deadline for the submission of new factual information. At that point, the Department determined that it did not have sufficient time to examine sales and FOP information Fairmont might submit, issue any supplemental questionnaires, and then verify the information. Thus, the Department determined not to extend the deadline and rejected the untimely filed factual information. In this regard, the first page of the Department's questionnaire states that "{i}t is essential and in your interest that the Department receive complete information early in the proceeding to ensure a thorough and accurate analysis and to provide all parties the fullest opportunity to review and comment on your submission and the Department's analysis."[533] Further, the Department notes that allowing parties to submit untimely sales and FOP data in circumstances such as Fairmont's invites parties to "game the system" whereby they do not initially disclose certain information to the Department and then, only if the Department enquires further, do they provide the necessary sales and FOP information. When in doubt with respect to a sale, a party must provide the Department with necessary information on a timely basis or, at the very least, inform the Department of its questions or concerns in a timely manner. Further, allowing late submission of FOPs of 23 different models of a substantial amount of sales would essentially require the Department to conduct a second verification which would be unduly burdensome.

[531] See Proprietary Memorandum: Final Results of the Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Whether Certain Unreported Sales Determined to be Subject Merchandise in the Preliminary Results are Subject Merchandise, dated concurrently with this memorandum.
[532] See Fairmont's November 23, 2009 submission at 8.
[533] See the Department's Questionnaire at G-1.

B. Whether AFA should have been applied to these unreported sales

- Fairmont argues that AFA was impermissibly applied to the unreported sales that the Department found to be subject merchandise. Fairmont states that these products are not subject merchandise.
- Fairmont quotes section 776(b) of the Act as stating that AFA may be imposed only if "an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information.[534] Fairmont states that the courts have precluded the application of adverse inferences where a respondent has "put forth its maximum efforts to provide Commerce with full and complete answers to all inquiries in the investigation."[535] The statute requires "more than an inadvertent error on the part of the respondent" to permit an adverse inference."[536] As the court notes,

> In the absence of additional evidence supporting a finding that a respondent "failed to cooperate by not acting to the best of its ability," where a claim of inadvertence is at issue, the simple fact of a respondent's failure to report information within its control does not warrant an adverse inference.[537]

- Fairmont argues that it "worked flat out to cooperate," noting that it timely submitted its section A Response of 309 pages on May 22, 2009 and 840 pages of sections C and D Responses on July 15, 2009. Fairmont further notes that through October 22, 2009 the Department issued 11 supplemental questionnaires to Fairmont, exceeding 1,000 questions, requiring detailed often lengthy coordinated answers, often from multiple Fairmont entities and individuals whose native language and culture is not English.

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[534] See Section 776(b) of the Act.
[535] See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (CIT 2003) (finding that adverse inferences cannot be "drawn merely from a failure to respond," such an inference can arise only "under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made, i.e., under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."). The Federal Circuit held that "the statutory mandate that a respondent act 'to the best of its ability' requires the respondent to do the maximum it is able to do." See id. at 1382. In order for the Department to determine that a respondent has not "done the maximum" and apply AFA, two affirmative findings are necessary: (i) objectively, "that a reasonable and responsible {respondent} would have known that the requested information was required to be kept and maintained;" and (ii) subjectively, that "the respondent . . . not only failed to promptly produce the requested information, but further that the failure to fully respond is the result of the result of the respondent's lack of cooperation either (a) failing to keep and maintain all required records, or (b) or failure to put forth the maximum efforts to obtain the requested information from its records." See also Yantai Timken Co., Ltd. v. United States, 521 F. Supp. 2d 1356, 1372-1373 (CIT 2007) (citing Nippon Steel at 1382-83).
[536] See e.g., Krupp Thyssen Nirosta Gmbh v. United States, No. 99-08-00550, Slip Op. 2001- 84, 25 C.I.T. 793, 805 (CIT 2001) (remanding decision finding that an inadvertent error is an insufficient basis to justify AFA, and noting that "While the parties must exercise care in their submissions, it is unreasonable to require perfection." See id. (citing NTN Bearing Corp, et. al. v. United States, 74 F.3d 1204, 1208 (CIT 1995)). See Ferro Union v. United States, 44 F. Supp. 2d 1310, 1329 (CIT 1999) (citing Krupp Thyssen Nirosta Gmbh v. United States, No. 99-08-00550, Slip Op. 2001- 84, 2001 WL 812167, at 9 (CIT 2001) (citing Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366 (CIT 2000))).
[537] See Nippon Steel Corp. v. United States, 146 F. Supp. 2d 835, 840 (CIT 2001).

Fairmont states that in order to fully answer each question and request, in the extremely tight schedule given, Fairmont devoted an absolutely huge amount of time, manpower and resources in filings exceeding 10,000 pages and over a million separate data figures. Fairmont claims that in previous wooden bedroom furniture reviews, the Department never issued so many questions so early in a review to any respondent.

- Fairmont argues that it also fully cooperated with the Department's verification of its cost and sales records at four offices/factories by four Department analysts over three weeks (October 26, 2009 to November 11, 2009). Fairmont notes that it was subject to simultaneous verifications at two different locations in Taiwan and the PRC, and accommodated two separate verification teams simultaneously conducting sales and cost/FOP verifications at a given location. Fairmont's counsel notes that he expressed concerns that overlapping verifications was not usual, and may lead to unfairness by overburdening a company and also concerns regarding the burden and fairness on the company, and the speed of the course of the review.
- Fairmont notes that this was the first time it had to respond to all sections of the antidumping questionnaire (sections A through D) in a U.S. antidumping case. Fairmont also notes that all of its unreported products were from its Hospitality Division and that because it assigned product codes based not only on the product, but also the sales project the same product potentially could be assigned different codes during the same period. Fairmont claims that this fact required reviewing each invoice manually, line-by-line, by reference to the description and drawings of the products, to identify subject merchandise. Given the vast range of diverse products produced and sold by Fairmont, and that the unique scope of this order forced it to consider the location where the customer intended to place the furniture items in determining whether items where in the scope, Fairmont argues that its reporting was more than reasonable and reflective of one who acted to the best of its ability.
- Fairmont notes that by value, the unreported products identified by the Department are only 2.80% of its total reported sales. Fairmont states that when the amount of unreported information (e.g., U.S. sales) is small, the courts and the Department reject using adverse inferences and apply neutral facts available such as the average calculated dumping margin of all the reported U.S. sales.[538]
- Fairmont directly addresses several reasons the Department gave in its Preliminary Results for applying AFA, beginning with the Department's statement "it is presumed that a respondent is familiar with its own records." Fairmont states that that is true of all respondents and so it would justify use of adverse inferences in all cases. Fairmont claims that the Department impermissibly reads out of the statute the requirement for adverse inferences that a respondent did not "act to the best of its abilities." Fairmont cites the Department as stating that "{a}t verification, the verifiers readily identified these unreported sales in Fairmont's records." Fairmont notes that Department verifiers asked

[538] See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 67 FR 78417 (December 24, 2002) (Pipe Fittings from Taiwan), and accompanying Issues and Decision Memorandum at Comment 3; See AK Steel Corp. v. United States, 346 F. Supp. 2d 1348, 1356 (CIT 2004).

Fairmont for a list of which products were not reported and that it diligently prepared a list and presented it to the verifiers. Fairmont notes that this is evidence of Fairmont's cooperation and openness, not the reverse. Fairmont cites the Department as stating that "{m}oreover, Fairmont acknowledges that most of these sales should have been reported." Fairmont asserts that it did not state this.[539] Fairmont cites the Preliminary Results as stating that "{t}hus, Fairmont failed to act to the best of its ability to comply with the Department's repeated requests for information regarding all of its sales and FOP information for subject merchandise." Fairmont also challenges the Department's "repeated requests" arguing that this must refer to a supplemental question which only concerned spare parts, which most of the unreported sales are not.

- The Coalition's arguments are highly similar to those of Fairmont. Briefly summarized, the Coalition argues that the application of AFA is not warranted and, moreover, under such circumstances, the statute and case law do not allow the application of AFA. The Coalition argues that the Department erroneously applied facts available, let alone AFA because the sales in question were omitted due to a clerical error and Fairmont had a question as to whether the products in question were in fact subject merchandise. The Coalition also notes that Fairmont has offered to provide the data on the sales.
- The Coalition argues that the courts have held that the statute requires "more than an inadvertent error on the part of the respondent" to permit the use of an adverse inference.[540] The Coalition asserts that the courts have struck down the Department's application of AFA where information was inadvertently unreported. "{W}here a claim of inadvertence is at issue, the simple fact of a respondent's failure to report information within its control does not warrant an adverse inference."[541] The Coalition contends that the Fairmont clerical staff collecting the data for this review inadvertently omitted the data on the 24 models based on the wording of the scope language.
- The GOC argues that because the sales account for a small percentage of total sales, total AFA is unwarranted. The GOC further contends that Fairmont acted to the best of its ability, especially in light of the extraordinarily large number of supplemental questions Fairmont was required to answer and in a relatively short period of time.
- Petitioners contend that the respondents do not address the salient issue of whether Fairmont acted to the best of its ability to provide a complete sales listing. Petitioners note that the Department issued the original questionnaire, and made that questionnaire available to Fairmont, on April 20, 2009. While Fairmont ultimately was selected as a mandatory respondent, Petitioners note that Fairmont notified the Department of its intent to participate as a voluntary respondent on January 29, 2009.[542] Petitioners note that although the Department's questionnaire may change slightly from review to review, one constant is that the respondents must provide a complete sales listing of their subject merchandise. Petitioners thus contend that Fairmont knew that it would need to provide

[539] See FDUSA Verification Report at 10 (company officials made clear that they "did not believe that all 24 of the product models identified as the unreported sales at issue where in fact within the scope of the review.").
[540] See Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1329 (CIT 1999).
[541] See Nippon Steel Corp. v. United States, 146 F. Supp. 2d 835, 840 (CIT 2001).
[542] See Preliminary Results, 75 FR at 5953 at note 4.

this information from the outset of this review. Petitioners note that Fairmont also requested, and received, an extension to file its response to section C of that questionnaire and that Fairmont filed its section C response on June 15, 2009 – two months after issuance of the questionnaire.

- Petitioners note that Fairmont provided a list of products that it considered non-subject merchandise and that that list included each of the models now at issue.[543] Petitioners cite to the subsequent supplemental questionnaire issued by the Department where it stated that the list submitted by Fairmont includes descriptions of unreported sales which "indicate that they may be within the scope of this review" and the Department requested that Fairmont explain why it categorized these items as non-subject.[544] Petitioners also note that this questionnaire contradicts Fairmont's statement that the Department failed to confirm in a supplemental questionnaire whether Fairmont reported all sales. With an extension, Petitioners state that Fairmont had nearly one full month to provide its first supplemental section C response,[545] but that Fairmont failed to report any additional sales.
- Petitioners note that although Fairmont had multiple opportunities to submit additional questionnaires responses, it never corrected its statements and data.
- Petitioners cite to Fairmont's explanations as to why it did not report the models in question where Fairmont stated that there was only a single person, an "individual clerk," who was responsible for identifying sales of the subject merchandise,[546] and that this clerk looked for key words from the scope language, e.g., "night tables" and "night stands," and did not report similar items such as "bedside tables" that did not precisely match those key words.[547] Petitioners note that Fairmont stated that the clerk simply assumed that any bedroom piece that also could house a mini-bar refrigerator or similar appliances must be non-subject because the scope language does not specifically reference "mini-bars."[548]
- Petitioners cite to Fairmont's description of the exhaustive efforts it went through to meet the Department's demands and note that this explanation contrasts with the relatively small number of unique furniture models Fairmont sells and the fact that the overwhelming majority of these were clearly in-scope or clearly out-of-scope based solely on their product descriptions.[549] Petitioners thus claim that it was not an "overwhelming" task to review the engineering diagrams and purchase order documents relating to the few models for which additional information was required. Moreover, Petitioners note that although Fairmont now characterizes the task as "overwhelmingly

[543] See Fairmont's June 15, 2009 submission at FD-Exhibit C-16-4.
[544] See the Department's June 26, 2009 Supplemental Section C Questionnaire at question 152.
[545] See the Department's July 16, 2009 Letter to Fairmont from Commerce Granting Extension for Section C and D Questionnaire Responses.
[546] See Fairmont's November 23, 2009 Letter Regarding Going Forward Matters at 6.
[547] See id. at 5-6.
[548] See id. at 6 and 8.
[549] See FDUSA Verification Report at Exhibit 13.

laborious," the company never gave any indication that it had difficulty accomplishing the task.[550]

- Petitioners address Fairmont's argument that "at a minimum, there was a reasonable belief that the concerned products were not subject" and that the Department "at most only claims that the products in issue here 'appeared to be' {…} subject product."[551] Petitioners contend that Fairmont is quoting the Department out of context, noting that the verification team discovered 24 models that, based solely on their product codes, "appeared to be sales of subject merchandise."[552] Petitioners note that upon further investigation, the Department "later confirmed that the sales in question were sales of subject merchandise by examining the engineering diagram for each product."[553] Petitioners claim that if Fairmont had actually reviewed its own engineering diagrams (as it claimed that it had),[554] any doubt about whether or not the products were subject to the order would have been removed. Petitioners note that moreover, after being caught, Fairmont stated that it "wished it had reported" sales of the models at issue.[555] Petitioners note that Fairmont's argument is further undercut by the fact that the company no longer contests the Department's preliminary decision to treat 17 of the 24 models as subject products.[556]
- Petitioners conclude that Fairmont failed to act to the best of its ability to provide a complete U.S. sales listing. Petitioners note that, by its own admission, Fairmont assigned the task of determining the universe of reportable sales, which is the most critical part of an antidumping response,[557] to one individual clerk. Petitioners contend that Fairmont and its counsel provided insufficient guidance to this clerk regarding how to identify the relevant sales (leaving the clerk to make his own assumptions when he did not fully understand the scope language). Petitioners note that Fairmont never contacted the Department with any questions about the scope of the order and instead simply made undisclosed – and patently incorrect – assumptions. For a large and sophisticated company like Fairmont, Petitioners argue this was hardly the best that it could do to ensure a complete response.
- Petitioners argue that had Fairmont (or its outside counsel) reviewed the engineering diagrams and purchase documentation for the specific items identified in the

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[550] See Fairmont's June 15, 2009 submission at C-43 and FD-Exhibit C-16-1; see also Fairmont's July 21, 2009 submission at SC-40.
[551] See Fairmont's Br. at I-12, citing the Preliminary Results, 75 FR at 5959.
[552] See Preliminary Results, 75 FR at 5959.
[553] See id.
[554] According to Fairmont, "for the Hospitality products we have to review the description and engineering layout of each product to identify the subject merchandise and non-subject merchandise in the sales database, rather than to only rely on the product codes." See Fairmont's July 21, 2009 submission at SC-40.
[555] See Fairmont's November 23, 2009 Letter Regarding Going Forward Matters at 6.
[556] See Fairmont's Br. at I-6-8. Although Fairmont does contest the Department's decision to treat seven products as in-scope, id., its arguments are meritless.
[557] The Department has explained that the failure to report complete U.S. sales data is one of the most serious errors a respondent can commit. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy, 64 FR 30750, 30757 (June 8, 1999).

Department's first supplemental section C questionnaire, they would have discovered, just as the Department readily did at verification,[558] that the items were subject products.

- Petitioners note that Fairmont was in possession of all of the records needed to provide a complete and accurate U.S. sales listing and thus it was Fairmont's responsibility to accurately determine which of its sales were of in-scope merchandise. Petitioners contend that if there still was any uncertainty about which sales to report, Fairmont should have either contacted the Department or conditionally reported the sales and request that they later be removed if found to be non-subject. Petitioners note that Fairmont took no such steps to ensure the completeness of its reporting and, consequently, failed to act to the best of its ability to provide necessary information. Petitioners conclude that an adverse inference, therefore, is required by section 776(b) of the Act.
- Petitioners further challenge Fairmont's argument that the unreported sales were not "insignificant." Petitioners note that Fairmont acknowledges that the unreported sales comprise nearly three percent of the U.S. sales value. Petitioners contrast this with the situations in the case cited by the respondents, where the unreported sales "only made up 0.0001 percent of all U.S. sales by value."[559] Petitioners note that, moreover, in the cases cited by the respondents where the Department applied a neutral remedy, the respondent itself brought the reporting error to the Department's attention at verification.[560] Petitioners contrast those cases with the situation here, where the Department discovered the unreported sales and argue that if the Department were to apply a neutral remedy, it would provide an incentive in the future for respondents to withhold selected sales.

Department's Position:

We agree with Petitioners that Fairmont has failed to rebut the Department's central finding that Fairmont failed to cooperate by not acting to the best of its ability when it failed to provide a complete U.S. sales listing. The Department made the original questionnaire available to Fairmont, on April 20, 2009. The questionnaire explicitly requested that Fairmont "{r}eport each U.S. sale of merchandise entered for consumption during the POR."[561] In fact, the questionnaire stated that:

> {t}here have been several instances during this proceeding of companies failing to report all sales of subject merchandise . . . Please confirm that you have properly reported all

[558] See Preliminary Results, 75 FR at 5960 ("At verification, the verifiers readily identified these unreported sales in Fairmont's records").
[559] See Pipe Fittings from Taiwan, and accompanying Issues and Decision Memorandum at Comment 3. In the review of shrimp from Thailand, the Department described the quantity only as "miniscule." See Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008) (Shrimp from Thailand), and accompanying Issues and Decision Memorandum at Comment 13.
[560] See Pipe Fittings from Taiwan, and accompanying Issues and Decision Memorandum at Comment 3; See Shrimp From Thailand, and accompanying Issues and Decisions Memorandum at Comment 13.
[561] See the Department's Antidumping Questionnaire at C-1.

> sales of subject merchandise . . ."[562] and directed Fairmont "If you have questions, we urge you to consult with the official in charge named on the cover page. If for any reason you do not believe that you can complete the response to the questionnaire by the date specified on the cover page of this questionnaire, or in the form requested, you should contact the official in charge immediately.[563]

We further stated that

> the scope of this review includes wooden bedroom furniture "whether or not assembled, completed, or finished," and also that the scope includes spare wooden bedroom parts fitting the description in the scope of this investigation (see Comment 14 of the Issues and Decision Memorandum in the investigation of this proceeding). Please confirm that you have properly reported all sales of subject merchandise and only sales of subject merchandise.[564]

Accordingly, from the earliest days of this review, Fairmont should have been aware of the need to provide a complete sales listing of its subject merchandise. Fairmont requested, and received, an extension to file its response to section C of that questionnaire which pertained to the reporting of U.S. sales. Fairmont filed its response on June 15, 2009, two months after the original issuance of the questionnaire. At no time did Fairmont notify the Department that it was having difficulty identifying its U.S. sales of subject merchandise. Thus, the record demonstrates that Fairmont was fully aware of the need to provide a complete sales listing and it had adequate time to provide this listing.

Fairmont suggests that the Department never questioned Fairmont with respect to the completeness of its U.S. sales listing prior to verification. In a June 22, 2009 supplemental questionnaire, the Department requested that Fairmont explain why it categorized some of its U.S. sales as non-subject merchandise.[565] Additionally, in the first section C supplemental issued on June 26, 2009, the Department cited a list submitted by Fairmont that included descriptions of products not reported by Fairmont that in fact "indicate that they may be within the scope of this review."[566] This list included some of the 23 models which the Department has determined were in scope and should have been reported.[567] Fairmont responded with assertions that each of the items was non-subject merchandise.[568] The Department then issued a follow-up question where it asked Fairmont to clarify why it reported these sales as non-subject.[569] In response, Fairmont asserted that the merchandise fell under exclusions in the scope of the

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[562] See the Department's Antidumping Questionnaire at Appendix XI.
[563] See i.d.at G-1 (emphasis in original).
[564] See id. at Appendix XI.
[565] See the Department's June 22, 2009 questionnaire sent to Fairmont.
[566] See the Department's June 26, 2009 Supplemental Section C Questionnaire at question 152.
[567] See the Preliminary Results Analysis Memorandum.
[568] See Fairmont's July 20, 2009 submission at 49 and FD-Exhibit C-152.
[569] See the Department's July 30, 2009 Supplemental Section C Questionnaire at question 154.

order.[570] Thus, early in the review, Fairmont was aware that the Department was concerned that it had not reported all its U.S. sales. Rather than seek clarification or assistance from the Department, Fairmont simply reasserted that these models were outside the scope of the order.

The Department attempted to verify Fairmont's response that these sales were outside the scope of the order. However, the Department found at verification that ten of the models were in the scope of the antidumping order. Further, the Department readily discovered at verification substantial additional sales of subject merchandise which Fairmont failed to report.[571] Taken as a whole, both Fairmont's insistence that subject merchandise was out-of-scope as well as its failure to report U.S. sales which were only discovered at verification demonstrate that Fairmont failed to cooperate to the best of its ability. In this regard, the Department notes that Fairmont has not been able to present even a colorable argument that 17 of the 23 models are out-of-scope.[572] Accordingly, there is no basis for Fairmont to assert that it had a reasonable belief that all of these products were out of scope.

Fairmont claims that, because the Hospitality Division from which the unreported sales came did not have usable product codes, identifying subject merchandise was "an overwhelmingly laborious manual process" for which Fairmont "had to review each invoice, line-by-line." Fairmont never brought these difficulties to the Department's attention prior to verification. Furthermore, Fairmont never rebuts the Department's statement in the Preliminary Results that the unreported sales were "readily identified . . . in Fairmont's records."[573] This statement was based on the fact that the Department verifiers were presented with one ledger in which all unique descriptions of Hospitality Division merchandise were easily itemized, and based on this itemized list, the Department readily identified the 24 types of unreported subject merchandise.[574] Moreover, one likely explanation of why Fairmont failed to report these sales is that by its own admission, it gave the responsibility of identifying its sales of subject merchandise to an "individual clerk," who looked for key words from the scope language such as "night tables" and "night stands," but did not report similar items such as "bedside tables" that did not precisely match those key words.[575] Considering the importance of reporting a complete sales listing, having one clerk perform such a perfunctory identification of subject merchandise, and failing to report all sales originally and then not fully examining the issue after further questions from the Department, demonstrates that Fairmont failed to act to the best of its ability by not putting forth the maximum effort.

We also find unpersuasive Fairmont, the GOC, and the Coalition's argument that the unreported sales were so "insignificant," that a failure to report them should not be considered a failure to act to the best of its ability. Similarly, Fairmont and the Coalition argue that the failure to report these sales was merely a clerical error and, as such, the Department cannot apply AFA. As an

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[570] See Fairmont's August 25, 2009 submission at 24-25.
[571] See the Preliminary Results Analysis Memo and Fairmont's July 20, 2009 submission at Exhibit C-152.
[572] See section above titled "Remaining 17 Types of Unreported Furniture."
[573] See Preliminary Results, 75 FR at 5960.
[574] See FDUSA Verification Report at Exhibit 13.
[575] See Fairmont's November 23, 2009 submission at 5, 6.

initial matter, neither Fairmont nor the Coalition explains why the reporting error was merely clerical. A failure to report approximately three percent of sales is not a clerical error, nor is it insignificant. In this regard, the administrative case cited to by Fairmont references a company that failed to report 0.0001 percent of their reported sales, or 28,800 times less than the percentage Fairmont failed to report.[576] The Department does not believe that the reasoning of this case is applicable to the instant review given the enormous difference in the percentage of the unreported sales. Similarly, the reasoning of the CIT case to which Fairmont cites is inapposite because the respondent in that case notified the Department early in the proceeding of reporting difficulties and the reporting failures were not discovered at verification.[577] Moreover, contrary to Fairmont and the Coalition's arguments, the application of partial AFA to Fairmont is a measured and proportional response to Fairmont's lack of cooperation. That is, AFA is only being applied to the unreported sales that Fairmont failed to report.

Fairmont argues that this review was conducted at an extraordinary and burdensome pace. The Department disagrees. The Department employed a normal time table in this review and extended several deadlines, including fully extending both the preliminary results and final results. For example, the time period between issuance of the first questionnaire to the start of verification was six months and the time period between the last day of the anniversary month of the applicable order and the Preliminary Results was one year after this date. Unextended preliminary results of antidumping reviews are due within eight months of the last day of the anniversary month of the applicable order.[578] Further, while Fairmont notes that the Department conducted verification earlier than in previous wooden bedroom furniture reviews, Fairmont fails to mention that the Department issued its questionnaire four months earlier in this review than it did to the responsive mandatory respondent in the previous wooden bedroom furniture review.[579] Thus, this case was not conducted under an extraordinary or burdensome time table.

Fairmont also argues that it was hampered by simultaneous verifications. However, the only simultaneous verifications occurred on only the first two days of the nearly twenty days of verification.[580] In any event, Fairmont has not provided any connection between the simultaneous verifications and its failure to report all of its U.S. sales of subject merchandise. Accordingly, the simultaneous verifications do not provide an excuse for or otherwise explain Fairmont's failure to report a complete U.S. sales listing.

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[576] See Pipe Fittings from Taiwan, and accompanying Issues and Decision Memorandum at Comment 3.
[577] See AK Steel Corp. v. United States, 346 F. Supp. 2d 1348, 1356 (CIT 2004).
[578] See Section 751(a)(3)(A) of the Act.
[579] See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372, 6373 (February 9, 2009).
[580] See the February 1, 2010, memoranda titled "Verification at Taicang Sunrise Wood Industry Co., Ltd. in the 4th Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," and "Verification at Fairmont International Co., Ltd. in the 4th Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China."

For all of the above reasons the Department continues to find that Fairmont failed to cooperate by not acting to the best of its ability and, therefore, the use of an adverse inference is appropriate in selection of facts available pursuant to section 776(b) of the Act.

C. Whether the AFA rate applied in the Preliminary Results was correctly chosen

- Fairmont argues that the 216.01 percent AFA margin should not be used. Fairmont states that by law, any AFA rate applied to a respondent must be reliable and relevant to that respondent.[581] Fairmont notes that the 216.01 percent AFA rate applied to Fairmont is the rate for the Chinese exporter Kunyu Furniture Co., Ltd. (Kunyu) in its 2004-2005 new shipper review under the order. Fairmont contends that when first time Chinese wooden bedroom furniture sellers (new shippers) sell to the U.S., they often sell a very small, necessarily limited quantity/range of subject merchandise to get their own dumping margins. Fairmont contrasts this with its own sales which cover a huge and complex variety of products/models and long-established types and channels of sales, such that situations such as Kunyu's are not relevant to Fairmont. Fairmont argues that, moreover, Kunyu has a "rudimentary factory operation" and did not "maintain inventory withdrawal documentation or production records that allow for per-unit or product-specific allocation of gross consumption."[582] Fairmont contrasts this with its multiple, long established large wooden bedroom furniture production facilities, its sound cost accounting records that were audited by the leading accounting firm, Ernst & Young, and were demonstrated to be sound by Department inquiry and verification. Fairmont further notes that Kunyu's 216.01 percent rate is used as the PRC-wide entity rate and as such is applied to respondents who (a) fail to provide any information, or (b) fully cease cooperating. In contrast, Fairmont claims that it is fully cooperative and thus that the same adverse rate should not be applied to Fairmont.
- Fairmont further argues that the 216.01 percent rate should be rejected as aberrational. Fairmont asserts that Department practice, supported by the courts, is that aberrational dumping margins should not be used as AFA, as contrary to the statutory mandate to accurately calculate the dumping.[583] Fairmont states that the accepted, standard

[581] See Section 776(c) of the Act. Any AFA rate should bear a rational relationship to the respondent, not just the industry on the whole. The law requires that an assigned rate relate to the company to which it is assigned. The courts have remanded the Department's selection of this AFA rate to new respondents that received a very low margin like Fairmont in this review. See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1336 (CIT 2009) (remanding the application of an AFA 216.01% margin to a respondent whose own margin was 15% as to its sales). See also Tianjin Mach. Imp. & Exp. Corp. v. United States, 2007 Ct. Int'l Trade LEXIS 137, Slip Op. 07-131 at 43 (CIT 2007).
[582] See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of 2004-2005 Semi-Annual New Shipper Reviews and Notice of Final Rescission of One New Shipper Review, 71 FR 38371, 38378 (July 6, 2006).
[583] See Hyundai Electronics Industries v. United States, Slip Op. 05-105 at 8-9 (CIT 2005); see Lasko Metal Prods., Inc. v. United States, 43 F.3d 1442 (Fed. Cir. 1994) (The Department's "exercise of its discretion is not unfettered . . . and must still maintain fidelity to its statutory mandate of calculating dumping margins 'as accurately as possible."); see Longkou Haimeng Mach. Co. v. United States, 33 CIT __, Slip. Op. 09-46 at 12.

definition of "aberrational" is "a deviation from the normal or the typical."[584] Fairmont lists what it states are the calculated margins of mandatory respondents in the investigation and subsequent reviews and lists margins ranging from nearly zero to 48.97 percent and contrasts these rates with Kunyu's 216.01 percent dumping rate and concludes that Kunyu's rate is aberrational -- i.e., a deviation from the normal or typical dumping margin -- and so should not be used as AFA. Fairmont argues that at most the 48.97 percent rate should be the AFA margin for Fairmont, if margins found for others are even (wrongly) used. Even then, Fairmont argues that 48.97 percent is an aberrational dumping margin for Fairmont as a significant majority of its sales calculated in the Preliminary Results are under 48.97 percent and thus 48.97 percent dumping margins are not the norm for Fairmont but rather aberrant.

- Fairmont further notes that there is no record evidence that supports a claim that the Kunyu rate is relevant to Fairmont. Fairmont notes that it tried to place information on the record that it claims would demonstrate that the Kunyu rate is irrelevant to Fairmont. While Fairmont acknowledges that it submitted the information after the deadline for submitted new factual information, it argues that because it did not and could not reasonably know that the Department would apply Kunyu's AFA rate to some of its sales, it should have been allowed to submit this information.
- Fairmont argues that at most, as AFA (albeit unwarranted), the average positive dumping margin found for Fairmont's reported sales should be used for the unreported products. Fairmont claims that by doing so, the AFA rate would be based on Fairmont's own situation, accounting for Fairmont's broad range of products and channels of distribution and recognizes Fairmont's huge cooperativeness.
- Fairmont argues that the Department was incorrect to multiply the 216.01 percent AFA rate by Fairmont's total sale value to its unaffiliated U.S. customers. Fairmont argues that the 216.01 percent AFA rate is a percentage of the net ex-factory (PRC) price, not the final price to unaffiliated U.S. customers.
- The Coalition argues that even if it were correct to apply AFA to Fairmont, the 216.01 percent AFA rate applied in the Preliminary Results bears no relationship whatsoever to Fairmont's actual rates of dumping on its sales. Because the Department has before it an accurate proxy rate to apply to the 24 models – i.e., the dumping margin for the remaining reported models - it would be inaccurate to apply the 216.01 percent AFA rate to its unreported sales.
- The Coalition argues that even if the Department were, albeit erroneously, to find that the application of facts available is appropriate, it must select a rate that bears some relationship to Fairmont's actual rate of dumping. The Coalition notes that the unreported sales identified by the Department consist of only a small percentage of Fairmont's reported sales and that in such situations the Department has not applied AFA.
- Petitioners state that in instances where a respondent fails to report U.S. sales, the Department's practice is to assign to the unreported sales quantity the highest transaction-

[584] See Websters New World Dictionary, 2nd College Ed. at 2; <http://www.yourdictionary.com/aberrational.>.

specific margin calculated for any reported sale,[585] but that in the Preliminary Results, the Department departed from its normal methodology with respect to Fairmont's unreported U.S. sales. Petitioners argue the Department should apply as AFA to Fairmont's unreported sales the highest non-aberrational transaction-specific margin. Petitioners argue that to their knowledge, the Department has never required that the pool of transaction-specific margins used as the source for partial AFA be limited to sales of the same models, or to the same customer categories, as the unreported sales. Petitioners add that the courts have never imposed such restrictions.[586]

- Petitioners argue that there is no reason why it is not appropriate to assign the highest margin for one reported sale to unreported sales by the respondent of different products to different customers. Based upon the calculations for the Preliminary Results, Petitioners argue that they have conservatively identified as the highest non-aberrational margin a high-quantity sale of Hospitality Division merchandise[587] that the Department should assign as AFA to Fairmont's unreported sales.
- Alternatively, if the Department believes that it is not feasible to follow its normal practice in this case because of the diverse range of products sold by Fairmont, Petitioners argue that the Department should, at the very least, assign as partial AFA the highest margin for sales of each product type to the unreported sales of each product type.
- While, like the respondents, Petitioners disagree with the Department's choice of an AFA rate, Petitioners disagree with the respondents that this rate cannot be corroborated. Petitioners note that in the Preliminary Results for certain non-aberrational U.S. sales by Fairmont, the Department calculated transaction-specific margins exceeding 216.01 percent. The existence of such transactions demonstrates that the 216.01 percent margin is relevant to Fairmont.
- Petitioners point out that the courts have repeatedly held that an AFA rate based upon secondary information is corroborated when it is exceeded by the respondent's own transaction-specific margins (either from the instant period or from a prior period), even if those margins related to a very small quantity of sales.[588] Petitioners note that the CIT

[585] See, e.g., Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 2511 (January 15, 2009), and accompanying Issues and Decision Memorandum at Comment 2 ("we assigned as partial AFA a rate that reflects the highest transaction-specific margin we calculated for Poly Plast in this review, based upon information reported by Poly Plast, to the quantity and value of Poly Plast's unreported U.S. sales"); see Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 23 ("we find it appropriate to base the dumping margin for the unreported sale on the highest transaction-specific dumping margin calculated for the respondent").

[586] See e.g., Ta Chen Stainless Steel Pipe, Inc. v. United States, 24 Ct. Int'l Trade 841, 846 (August 25, 2000) and Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1338 (CIT 2002).

[587] The identification of the sale would disclose business proprietary information (BPI). The sale is identified in Petitioners' Case Brief at 60.

[588] See e.g., PAM, S.p.A. v. United States, 582 F.3d 1336 (CIT 2009) (holding that a respondent's own transaction-specific margins from a prior review corroborated an AFA rate based upon a different company's margin); see Mittal Steel Galati S.A. v. United States, 31 C.I.T. 730, 491 F. Supp. 2d 1273 (CIT 2007) (holding that a respondent's own transaction-specific margins from a prior review corroborated an AFA rate based upon the Petition). See also, Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330 (CIT 2002).

recently upheld the Department's application of the same 216.01 percent rate as the AFA margin for Shanghai Starcorp Furniture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd. (collectively, Starcorp), another large Chinese furniture manufacturer and a respondent in the first administrative review of this order.[589] Petitioners also oppose Fairmont's argument that the Department should not apply the AFA rate to the final price to the U.S. customer for the unreported sales. Petitioners note that Fairmont cites no record evidence demonstrating that the unreported sales values are stated on a delivered basis.

- Even if the unreported sales values were stated on a delivered basis, Petitioners contend that the information that would be required to derive net prices is not available on the record. Such information is unavailable because, Petitioners note, Fairmont failed to act to the best of its ability to report these sales (and, to the extent applicable, any expenses related to these sales).[590] Under these circumstances, Petitioners contend that the Department should not make inferences and adjustments in Fairmont's favor based upon the expenses incurred for Fairmont's reported sales. As AFA, the Department should use the sales values for the unreported products without adjustment.

Department's Position:

In an earlier segment of this proceeding, the Department was instructed by the CIT to explain how the rate selected as AFA for Starcorp represented a "reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance."[591] The Department responded in Starcorp Remand that the courts have consistently affirmed the Department's selection of AFA margins where the Department was able to corroborate the selected margin using the respondent's own transaction specific margins, either from the POR at issue, or a previous POR.[592] Further, AFA rates have been found to be adequately corroborated when they are "reflective of some, albeit a small portion" of the respondent's sales.[593] We stated in Starcorp Remand that our examination of Starcorp's information from the investigation revealed that the AFA rate of 216.01 percent selected for Starcorp during that review falls within the range of Starcorp's calculated model-specific

[589] See Fujian Lianfu Forestry Co. v. United States, 2010 Ct. Intl. Trade LEXIS 33, 3-4 (CIT 2010) (Fujian v. United States).
[590] See Preliminary Results, 75 FR at 5959 ("Since Fairmont did not report these sales and the related sales adjustments and did not provide information that would allow the Department to determine normal value for these products as requested by the Department, the information necessary to calculate a dumping margin for these sales is not on the record").
[591] See Fujian v. United States, 638 F. Supp. 2d at 1337.
[592] See Final Results of Redetermination Pursuant to Court Remand (December 14, 2009) pursuant to Fujian Lianfu Forestry Co., Ltd. v. United States, Court No. 07-003-6; Slip Op. 09-81 (CIT2009) at 6 (Starcorp Remand) citing to PAM, S.p.A. v. United States, 2009 U.S. App. Lexis 21118, at 9-10, Court No., 2009-1066, (Fed. Cir., Sept. 24 2009) ; Ta Chen v. United States, 298 F.3d 1330, 1339-40 (Fed. Cir. 2002); Mittal Steel Galati S.A. v. United States, 491 F. Supp. 2d 1273, 1279 (CIT 2007).
[593] See PAM v. United States, CIT LEXIS 73, 12-13, Slip. Op. 2008-75 (CIT 2008) quoting Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339-40 (Fed. Cir. 2002), aff'd PAM, S.p.A. 2009-1066.

weighted average dumping margins from the investigation. Specifically, we stated that while the majority of the model-specific margins were below 216.01 percent, we found several model-specific margins above 216.01 percent. Moreover, the margins above 216.01 percent were based on several of Starcorp's product categories and they reflect a wide range of sales quantities and prices.[594] We thus determined that the sales on which margins above 216.01 percent were calculated are not aberrant or unusual, but instead are indicative of Starcorp's selling practices such that they can be relied upon for corroboration purposes.[595] All of the above was upheld by the CIT in Fujian v. United States.[596]

Here, as in the Starcorp Remand, we have found that the rate of 216.01 percent represents a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance, because the Department is able to corroborate the selected margin using the respondent's own transaction specific margins, either from the POR at issue, or a previous POR.[597] Further, as stated above, AFA rates have been found to be adequately corroborated when they are "reflective of some, albeit a small portion" of the respondent's sales.[598] The 216.01 falls within the range of Fairmont's calculated model-specific weighted average dumping margins from this review.[599] While the majority of the model-specific margins were below 216.01 percent, several model-specific margins are well-above 216.01 percent and these dumping margins used to corroborate the AFA rate do not reflect unusually high dumping margins relative to the calculated rates determined for the cooperating respondent. Accordingly, the Department is satisfied that the dumping margins used for corroborative purposes reflect commercial reality because they are based upon real transactions that occurred during the POR, were subject to verification by the Department, and were sufficient in number both in terms of the number of sales and as a percentage of total sales quantity.[600] Moreover, the margins above 216.01 percent are based on several of Fairmont's product categories and they reflect a wide range of sales quantities and prices.[601] In this regard, we note that Fairmont has pointed to facts which purportedly demonstrate that Fairmont is different from the respondent Kunyu for which the 216.01 rate was calculated.[602] Notwithstanding Fairmont's assertions, we determine that any such differences are outweighed by the fact that Fairmont reported several model-specific margins during the POR of that exceeded 216.01 percent, demonstrating that this margin is indeed relevant to its selling practices. As described above, this demonstrates that the 216.01 rate is relevant to Fairmont

[594] See Starcorp Remand at 7 citing to Attachment 1 at 69 & Attachment 2.
[595] See Starcorp Remand.
[596] See Fujian Lianfu Forestry Co., Ltd. v. United States, Slip. Op. 2010-34 at 5-6 (CIT April 5, 2010).
[597] See Starcorp Remand at 6.
[598] See id.
[599] See Preliminary Results.
[600] See the August 11, 2009 Corroboration Memorandum.
[601] See the Final Results Analysis Memo at Exhibit 1.
[602] Fairmont argues that the Department improperly refused to permit Fairmont to submit additional information on the record to demonstrate that Kunyu's situation is not relevant to Fairmont's situation. See Fairmont's Rebuttal Brief, Volume I, at 2. As discussed above, any purported differences between Kunyu's situation and Fairmont's situation is outweighed by the fact that Fairmont reported several model-specific margins during the POR above 216.01 percent.

during this POR. Finally, Fairmont argues that, because it purportedly has many sales which are not dumped, the 216.01 percent margin is not relevant to Fairmont.[603] However, the existence of non-dumped sales does not negate the fact that Fairmont has a number of individual sales for several product categories during this POR with dumping margins above 216.01. For all these reasons, we find that the 216.01 percent AFA rate is not aberrational and, contrary to both Fairmont's and the Coalition's claims, is relevant to Fairmont.

With respect to reliability, the 216.01 AFA rate that we are using as AFA is reliable because it was calculated and is a company-specific rate calculated in the 2004-2005 New Shipper Review of the wooden bedroom furniture order.[604] The rate from this antidumping duty new shipper review was based on respondent data that were accepted by the Department and SVs that were selected by the Department. This rate has been used as an AFA rate in every segment of this proceeding since the new shipper review and the Department has received no information that warrants revisiting the issue of its reliability.

For all these reasons, the Department finds the 216.01 percent rate both relevant and reliable as applied to Fairmont as partial AFA for its unreported sales.

The purpose of an AFA rate is to ensure cooperation. Accordingly, we have disregarded the AFA rates of 46.97 percent and 13.65 percent proposed by Fairmont because they are not significantly higher than the non-adverse rate of 29.89 percent calculated in the prior review for the mandatory respondent and applied to all separate rate respondents.[605] As AFA the Department has applied the 216.01 percent rate since the first review of this proceeding, finding it sufficiently adverse to encourage cooperation and thereby effectuate the purpose of AFA. Further, we find the 216.01 rate to be relevant to Fairmont because it falls within the range of Fairmont's calculated model-specific weighted average dumping margins from this review.[606]

Petitioners respond to the Department's explanation that due to the extremely high volume of transactions involving a wide and complex variety of products/models and types of sales it is not feasible to choose one margin as the AFA rate by arguing that many other cases have a similar volume of sales, customer categories, and different models. We disagree and note that Petitioners have not supported their statement by citing to any case where the range of products, prices, and customer categories are as wide as this review, and further have the sales volume present here. Thus, we do not believe it is feasible to choose one sale-specific, product-specific margin of Fairmont's in place of the 216.01 percent margin used in previous reviews and found by both the Department and the CIT in Fujian v. United States[607] to be both reasonable and reliable. While Petitioners have argued to apply one of Fairmont's relatively high margin sales

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[603] See, e.g., Fairmont's Case Brief, Volume I, at 16-19, Table 2.
[604] See 2004-2005 New Shipper Review, 71 FR at 70741.
[605] See Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 55810 (October 29, 2009).
[606] See Preliminary Results.
[607] See Fujian Lianfu Forestry Co., Ltd. v. United States, Slip. Op. 2010-34 at 5-6 (CIT April 5, 2010).

as the AFA rate for the unreported sales, for the reasons stated above, we find choosing one transaction as AFA is not appropriate in this review.

Petitioners alternately argue to apply product specific AFA rates based on the highest margins for each class of unreported sales. The Department has not adapted this approach because it suggests a level of precision which is not part of an AFA determination. Similarly, Fairmont has argued that because the AFA rate is a percentage of net price, the Department was incorrect in applying it to the gross price of its unreported sales. As an initial matter, one of the purchase orders of the unreported sales obtained at verification demonstrate that the unreported sales value used as the basis for applying the AFA rate do not include international or U.S. movement charges.[608] More importantly, Fairmont's argument misunderstands the analytical basis of an AFA rate. The Department is not applying this rate as a calculated rate for which adjustments would be appropriate. Nor is this rate specific to a particular selling practice. Instead, this rate is being applied as an AFA rate which is, by definition, an approximate rate based on facts otherwise available (i.e., an approximation) because the record contains a lack of sufficient information to calculate a respondent-specific rate for these transactions. Thus, there is no analytical basis to adjust an AFA rate based on the selling practice of an uncooperative respondent. In any event, Fairmont failed to report these sales. As a result, the Department does not have the necessary information to calculate their net price. Thus, rather than rely on Fairmont's various estimates of what the net price might be, as AFA, the Department has continued to apply the 216.01 percent margin to the gross unit price of all unreported sales.

Comment 32: Credit Expenses and Inventory Carrying Costs

In the Preliminary Results the Department reduced U.S. price by the imputed credit expenses and inventory carrying costs incurred by FDUSA on CEP sales.

- Fairmont argues that the total actual financing cost on FDUSA's books that was comprised in the ISE ratio had already captured all possible financing costs incurred in Fairmont's company-wide operations. Fairmont argues that these financial costs necessarily covered any imputed credit expenses and inventory carrying costs incurred on the various credit periods of accounts receivables. Thus, to deduct both the actual financing costs incurred by FDUSA and the credit expenses and inventory carrying costs is impermissible because it is double-counting.
- Fairmont provided a formula to be used to avoid double counting of both actual interest costs and imputed interest costs.[609]
- No other party submitted comments on this issue.

[608] See the FDUSA Verification Report at Exhibit 13.
[609] Fairmont's suggested calculations in its Case Brief, Volume I, at 32-33, and 46-47, incorporates BPI and thus cannot be summarized here.

Department's Position:

We agree with Fairmont that we should adjust the U.S. interest expenses deducted from US price. To avoid double counting these expenses, we are only deducting FDUSA's financing expenses incurred on subject merchandise that exceed the corresponding imputed expenses (i.e, credit expenses and inventory carrying costs). [610] We have rejected Fairmont's suggested calculation because it is not specific to imputed expenses on subject merchandise and thus the calculation methodology employed by the Department more accurately adjusts for any double counting caused by imputed credit and inventory carrying costs.

Comment 33: Nanjing Nanmu

On March 19, 2009, Nanjing Nanmu stated that it had no shipments during the POR.[611] However, the Department has placed on the record entry documents it obtained from CBP for four POR entries of merchandise that were declared as Nanjing Nanmu's merchandise.[612] These entry records include commercial invoices that indicate that the entries in question were subject merchandise and that the seller was Nanjing Nanmu.[613] Following the release of the CBP data, the Department issued several supplemental questionnaires to Nanjing Nanmu and verified the company.[614] On April 28, 2010, the Department issued a memorandum addressing Nanjing Nanmu's claim of no shipments.[615] In the Nanmu No Shipments Memo we stated that because a value had been recorded for the three sales in question in Nanjing Nanmu's accounts receivable ledger based on the value listed in the Chinese customs declaration form and that company officials were unable to demonstrate that the accounts receivable charges associated with these sales were later reversed or that Nanjing Nanmu was not paid for these sales, that we would not treat these sales as sample sales. However, we further found that Nanjing Nanmu made no sales of subject merchandise during the POR to the United States because all of the sales in question were first sold to a Chinese third party, who then sold the subject merchandise to its customer in the United States. As support for our decision that the sales to the United States were made by the Chinese third party reseller and not Nanjing Nanmu, we cited the verification report where Nanjing Nanmu officials explained that the Chinese third party reseller was responsible for

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[610] See e.g., Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (August 11, 2009) and accompanying Issues and Decision Memorandum at Comment 4.
[611] See Nanjing Nanmu's March 19, 2009 letter.
[612] See the August 14, 2009 Memorandum to the File Regarding Release of U.S. Customs and Border Protection (CBP) Raw Entry Data, E-mail and Memorandum Requests, and Entry Documents Regarding Wooden Bedroom Furniture from the People's Republic of China (PRC) (August 14, 2009 CBP Entry Data Memo).
[613] See the Memorandum to the file titled "Release of U.S. Customs and Border Protection (CBP) Raw Entry Data, E-mail and Memorandum Requests, and Entry Documents Regarding Wooden Bedroom Furniture from the People's Republic of China (PRC) (CBP Memo).
[614] See the March 31, 2010 memorandum titled "Verification of the Questionnaire Responses of Nanjing Nanmu Furniture Co., Ltd. in the Administrative Review of Wooden Bedroom Furniture from the People's Republic of China" (Nanmu Verification Report) at Exhibit 1.
[615] See the April 28, 2010, Memorandum for Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations Regarding Claim of No Shipments (Nanmu No Shipments Memo).

setting the price and issuing the commercial invoices to the U.S. customer.[616] While the commercial invoices to the U.S. customer identified Nanjing Nanmu as the seller, Nanjing Nanmu company officials explained that the invoices were between the Chinese third party and the U.S. customer even though Nanjing Nanmu's name rather than the Chinese third party's name was listed on the invoices as the seller.

- Petitioners argue that the Department should not rescind the review for Nanjing Nanmu because Nanjing Nanmu exported and sold subject merchandise. Petitioners quote 19 CFR at 351.213(d)(3), which states that the Department "may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." Petitioners further note that in the Preliminary Results of this review the Department published margins for "Exporters,"[617] implying that because Nanjing Nanmu is an exporter, the Department should have considered its sales.
- Petitioners also argue that Nanjing Nanmu should receive an AFA rate. Petitioners argue that Nanjing Nanmu misled the Department from the beginning of this review. Petitioners assert that Nanjing Nanmu initially reported having no shipments during the POR;[618] then responded that they "had three shipments of merchandise that included a very small number of samples of bedroom furniture" and "that these transactions concern samples sales only."[619] Petitioners note Nanjing Nanmu and their U.S. importer also submitted certifications that these sales were for sample purposes and in this response Nanjing Nanmu made no mention of the third party distributor.[620] Petitioners also note that in the first three supplemental questionnaire responses, Nanjing Nanmu continued to report that it made only "sample sales," and that it was only in the fourth questionnaire response (which was submitted one business day before the Preliminary Results were signed), that Nanjing Nanmu admitted it did not sell directly to the U.S. importer but instead to an unaffiliated third party. Petitioners note that it was not until the fifth questionnaire response on March 8, 2010 that Nanjing Nanmu identified the party it contends is the "seller" of the merchandise in question. Petitioners argue that instead of being forthcoming with this information Nanjing Nanmu took steps to obfuscate the involvement of the third party distributor in the transactions.
- Petitioners argue that the Department and the CIT have recognized that even if a respondent ultimately responds to the Department's request for information that does not mean the respondent fully cooperated.[621] Therefore, Petitioners argue that the

[616] See Nanmu Verification Report.
[617] See Preliminary Results 75 FR at 5963.
[618] See Nanjing Nanmu's March 19, 2009 submission.
[619] See Nanjing Nanmu's September 14, 2009 submission at 1-2 and Exhibit 2.
[620] See id. at Exhibit 2.
[621] See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005), and accompanying Issues and Decision Memorandum at Comment 2 (HFHT Final).

Department should use AFA if it determines that Nanjing Nanmu should receive a separate rate.

- Petitioners also argue that in the Nanmu No Shipments Memo the Department failed to evaluate the implications of Nanjing Nanmu's engagement in a scheme to produce fake invoices and Nanjing Nanmu's failure to cooperate in this review.
- Petitioners argue that if the Department accepts Nanjing Nanmu argument that it allowed a third party trading company to ship subject merchandise using its invoices, then the Department should find that Nanjing Nanmu knowingly participated in a scheme that allowed this third party trader to make shipments using its cash deposit rate and that this scheme impeded the Department's "ability to impose antidumping duties and issue instructions to CBP to assess the correct antidumping duties, as mandated by section 731 and 736 of the Act."[622]
- Petitioners argue that HFHT Final involves a similar fact pattern and in that case the Department applied AFA to the company that was supplying its invoices to another exporter. Petitioners further argue that in addition to precedent, policy reasons require the Department to take steps that will prevent separate-rate companies from "shopping" their invoices to other exporters. Petitioners contest that if the Department allows this behavior from Nanjing Nanmu it would open an avenue for applying the lowest calculated rate to all companies in the PRC as potential respondents could begin shipping merchandise under the invoices of low rate companies, while the low rate companies could avoid reviews by "selling" the merchandise to the other company and then claiming that they were not acting as the shipper/seller to the United States.
- Petitioners further argue that Nanjing Nanmu's concession that it authorized a third party to reproduce its invoice further demonstrates the importance of applying combination rates in this proceeding.
- Petitioners argue that because Nanjing Nanmu engaged in export and sales activities of subject merchandise and because Nanjing Nanmu did not submit a separate rate certification/application, the Department should determine that Nanjing Nanmu has not rebutted the presumption of government control and thus should determine that Nanjing Nanmu is part of the PRC-wide entity for the purpose of this review.
- Nanjing Nanmu argues that the Department has fully investigated the facts and circumstances of the transactions under consideration and has concluded that Nanjing Nanmu in fact did not export this merchandise.
- Nanjing Nanmu also continues to maintain that despite the Department's preliminary determination, Nanjing Nanmu's understanding that some of the sales in question were sample sales is reasonable because the quantities of each type of furniture were very small, which supports its assertion that they were for showroom evaluation, and not commercial quantities to fulfill orders by major distributors. Nanjing Nanmu also argues that as verified by the Department, it has not yet been paid for the exports. Nanjing

[622] See HFHT Final and accompanying Issues and Decision Memorandum at Comment 2 ; see also Tianjin Mach. Imp. & Exp. Corp. v. United States, 31 CIT 1416 (CIT 2007).

Nanmu argues that this two year delay further supports its contention that these were samples.

- In regard to Petitioners' argument for the use of AFA, Nanjing Nanmu argues that it could not have known how its sales were being presented to U.S. government agencies because Nanjing Nanmu was not responsible for entry into the United States. Nanjing Nanmu further notes that both the U.S. importer and the Chinese third party reseller refused to provide information that would have assisted Nanjing Nanmu in answering the questions asked by the Department.
- Nanjing Nanmu also argues that it answered numerous supplemental questionnaires to the best of its ability and cooperated in verification as well. Thus, Petitioners' argument that it did not cooperate is not supported by the record.
- Nanjing Nanmu argues that it filed a separate rate application and thus should receive a separate rate if the sales in question are found to be subject merchandise.

Department's Position:

As detailed below, the Department's position is organized in the following manner: 1) the Department considers whether the sales in question were sample sales that should be excluded from consideration; 2) the Department considers whether the sales should be considered Nanjing Nanmu's sales; 3) the Department considers whether Nanjing Nanmu should be granted a separate rate; 4) and the Department considers whether facts available and AFA should be applied to these sales.

Whether the Sales in Question Should Be Excluded from Consideration

In the Nanmu No Shipments Memo, the Department preliminarily decided that Nanjing Nanmu's sales should have been reported to the Department because Nanjing Nanmu's books and records demonstrated that these sales were made for an expected payment.[623] Nanjing Nanmu continues to argue that these sales were sample sales which should be disregarded based on a lack of payment and the small quantity of subject merchandise involved in these sales. As an initial matter, we note that Nanjing Nanmu has not argued that it does not expect to receive payment for these sales. Instead, Nanjing Nanmu discusses its failure to receive payment as a "delay in payment."[624] While this statement is not entirely clear, it suggests that Nanjing Nanmu expects to receive payment at some later date.

In any event, we find that there is no basis to disregard these sales because these sales were made for an expected payment. The invoices between Nanjing Nanmu and its purported Chinese third-party customer[625] and the invoice with the U.S. customer[626] stated that Nanjing Nanmu would be paid for these sales. While Nanjing Nanmu provided contracts between itself and a Chinese third

[623] See the Nanmu No Shipments Memo at 2.
[624] See Nanjing Nanmu Rebuttal Brief at 2.
[625] See Nanmu Verification Report at Exhibit 1. (demonstrating that the Chinese third party is located in the PRC).
[626] See Nanjing Nanmu's September 14, 2009 submission at 1 and Exhibit 1.

party for two of the four unreported sales stating that they were "used for the client testing, and all the samples are provided by the factory for free,"[627] for these same sales Nanjing Nanmu recorded in its accounts receivable ledger amounts due based on the value listed in the invoices with the Chinese third party.[628] Further, the U.S. customer paid customs duties on these sales at the sales value Nanjing Nanmu summarized in its first submission to the Department.[629] Also, the Department notes that, by definition, transactions recorded in accounts receivable represent payments that are expected by a company.[630] Company officials were unable to demonstrate that the accounts receivable charges associated with these sales were later reversed or that Nanjing Nanmu was not paid for these sales and it has not demonstrated that the customer was not obligated to pay for such sales.[631]

We also disagree with Nanjing Nanmu's argument that the Department should not consider these transactions sales because they were of small/non-commercial quantities. In determining that a transaction does not qualify as a "sale" for purposes of a dumping analysis, a party must show that there was a lack of consideration or transfer of ownership.[632] We are not required, either by the regulations or by our practice, to disregard any sales, even if made in small quantities.[633] In this regard, simply because transactions are categorized as sample sales does not mean that the Department should exclude these sales from consideration.[634]

As discussed above, Nanjing Nanmu has not demonstrated that the sale was made without an expectation of payment. Further, the sale involved a transfer of ownership between Nanjing Nanmu and the unaffiliated U.S. customer. It is well established that the burden of evidentiary

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[627] See Nanmu Verification Report at Exhibit 1.
[628] In the Nanmu Verification Report at 4, we quoted Nanjing Nanmu as stating that "Mr. Lu explained that the value listed on the Customs Declaration and on the Export Invoice is based on the contract between {the Chinese third party} and Nanjing Nanmu" and quoted Nanjing Nanmu at 10 of the Nanmu Verification Report that it recorded "in the accounts receivable ledgers based on the value listed on the corresponding Export Invoice and the Customs Declaration."
[629] See the CBP Memo.
[630] "Accounts receivable are the claims upon customers that can be expected to be collected within the normal operating cycle (those that cannot are included among noncurrent assets). Deducted from accounts receivable is an allowance for doubtful accounts-an estimate of the amounts owed to the company that will be uncollectible. Thus the net amount of accounts receivable is not the total amount owed to the firm but only the portion that the firm estimates is actually collectible." Further, "{r}eceivables represent claims arising from sales of goods . . . which establishes a relationship whereby one party is indebted to another." Receivables that cannot be collected "should be reduced by the amount likely to be uncollectible." See Financial Accounting Principles and Issues Fourth Addition, Michael H. Granof and Philip W. Bell, published by Prentice-Hall, Inc (1991) at 34, 257, and 287.
[631] Due to the proprietary nature of the entry documents from CBP, the verifiers were unable to question company officials about an additional entry, which also contained merchandise declared to be subject to the instant order.
[632] See NSK, Ltd. v. United States, 115 F.3d 965, 974-75 (CAFC 1997).
[633] See Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan, 75 FR 41804 (July 19, 2010) and accompanying Issues and Decision Memorandum at Comment 10.
[634] See, e.g., NSK Ltd. v. United States, 26 CIT 650, 670 (2002) ("Commerce is correct . . that it is not obligated to exclude any transaction from the United States sales database merely because such transaction is labeled as a sample sale.") reversed in part on other grounds, 390 F.3d 1352 (2004).

production belongs "to the party in possession of the necessary information."[635] Thus, the burden was on Nanjing Nanmu to support with evidence its claim that no expectation of payment was associated with these sales.

For all these reasons and consistent with the Preliminary Results, the Department continues to find that there is no basis to disregard these sales.

Whether the Sales in Question Should be Attributed to Nanjing Nanmu

We have also reconsidered our decision in the Preliminary Results and determined that these sales should be attributed to Nanjing Nanmu. In making this decision, we have applied the following criteria for determining if a party is the principal to a sale and thereby determine whether Nanjing Nanmu made the sales in question: [636]

> **(1) The Extent to which the Foreign Producer Participates in Negotiating Price and Other Terms of Sale with the End-Customer**

In its first three submissions concerning why it failed to report these sales, Nanjing Nanmu never mentioned the involvement of the Chinese third party. Rather, the only explanation Nanjing Nanmu provided as to why it failed to report the sales in question was that they were sample sales.[637] If these were in fact sales where Nanjing Nanmu had no participation in negotiating price and other terms of sale with the U.S. customer, it is unclear why Nanjing Nanmu would not immediately state this fact. Instead, Nanjing Nanmu itself submitted on September 14, 2009, the commercial invoices identifying the only two parties in the sale to be Nanjing Nanmu and the U.S. customer, and accompanying this submission were certifications from the heads of both companies testifying to the accuracy of the submissions.[638] However, it was only in its January 29, 2010 response, five months after the Department originally raised this issue with Nanjing Nanmu, and only after the Department issued supplemental questionnaires that Nanjing Nanmu claimed that a Chinese third party made the sales to the U.S. customer.[639] We note that this information was directly relevant to the initial and continued underlying question of why Nanjing Nanmu failed to report these sales. In addition, it was only after Nanjing Nanmu informed the Department of the supposed role of this Chinese third party that Nanjing Nanmu informed the Department that the Chinese third party was no longer cooperating with Nanjing

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[635] See Zenith Electronics Corp. v. United States, 988 F.2d 1573, 1583 (CAFC 1993). Even where the Department does not ask a respondent for specific information that would enable it to make an exclusion determination in the respondent's favor, the respondent has the burden of proof to present the information in the first place with its request for exclusion. See NTN Bearing Corp. of Am. v. United States, 997 F.2d 1453, 1458 (CAFC 1993).
[636] The first four criteria were applied in Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa, 62 FR 61084, 61088 (November 14, 1997). The last three criteria were additionally considered in Chia Far Industrial Factory Co., Ltd. v. United States, 28 CIT 1336, 1350 (2004).
[637] See Nanjing Nanmu's September 14, 2009 submission at 2; see also Nanjing Nanmu's December 11, 2009 submission at 1-2; see also Nanjing Nanmu's December 31, 2009 submission at 1-3.
[638] See Nanjing Nanmu's September 14, 2009 submission at Exhibit 2;
[639] See Nanjing Nanmu's January 29, 2010 submission at 1.

Nanmu in responding to the Department's questions, and thus it was unable to answer the Department's questions regarding the third party's role in the sales.[640] It is in this context that Nanjing Nanmu has stated that the Chinese third party negotiated price and delivery terms with the U.S. customer.

However, even after Nanjing Nanmu informed the Department that the Chinese third party negotiated price and delivery terms with the U.S. customer, it continued to make statements that call into question whether the Chinese third party was negotiating on its own, or under Nanjing Nanmu's direction. At verification, Nanjing Nanmu stated that "{A}ll commercial invoices to {the U.S. customer} during the POR were issued by {the Chinese third party} on behalf of Nanjing Nanmu."[641] In addition, other proprietary statements made by Nanjing Nanmu indicate that it is appropriate to attribute the sales to Nanjing Nanmu.[642] We further note that Nanjing Nanmu has not challenged the veracity of any of these verification findings.

Further, the commercial invoices submitted to CBP stating the price and other terms of sale and attributing these terms to Nanjing Nanmu and not the Chinese third party were placed on the record[643] five months before Nanjing Nanmu changed its explanation claiming, instead, that these were not its sales.[644] In its initial submission, Nanjing Nanmu submitted sales information that contained the prices and quantity charged to the U.S. customer rather than to the Chinese third party.[645]

Even if we consider Nanjing Nanmu's late statements that the Chinese third party negotiated the price and shipment terms,[646] we note that Nanjing Nanmu continued to make proprietary statements that 1) it is appropriate to attribute the sales to itself,[647]and that the {the Chinese third party} only issued the invoices on behalf of Nanjing Nanmu.,[648] Nanjing Nanmu's statements that the Chinese third party rather than itself set the terms of the sales in question are not supported by the invoices which list Nanjing Nanmu as the seller and exporter.[649] Thus, while the record contains conflicting statements, the Department finds, after weighing all the aforementioned evidence, that the evidence supports a finding that Nanjing Nanmu participated in negotiating price and other terms of sale with the end-customer.

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640 See Nanjing Nanmu's March 8, 2010 submission at 1.
641 See Nanmu Verification Report at 5.
642 See id. and the August 11, 2010 Memorandum titled "Proprietary Information in August 11, 2010 Issues and Decision Memorandum."
643 See August 14, 2009 CBP Entry Data Memo.
644 See Nanjing Nanmu's January 29, 2010 submission at 1-2.
645 See Nanjing Nanmu's September 14, 2009 submission at Exhibit 1.
646 See Nanjing Nanmu's March 8, 2010 submission at 1-2 and the August 11, 2010 Memorandum titled "Proprietary Information in August 11, 2010 Issues and Decision Memorandum."
647 See Nanmu Verification Report at 5 and the August 11, 2010 Memorandum titled "Proprietary Information in August 11, 2010 Issues and Decision Memorandum."
648 See Nanmu Verification Report at 5.
649 See Nanjing Nanmu's September 14, 2009 submission at Exhibit 1; see also August 14, 2009 CBP Entry Data Memo.

(2) Whether the Foreign Producer Participates Directly in Marketing the Subject Merchandise to the End-Customer, and the End-Customer Has Knowledge at the Time of Sale of the Producer's Identity

Nanjing Nanmu engaged in several types of contact with the U.S. customer regarding the transactions in question. Nanjing Nanmu submitted documentation on the record regarding product specifications from the U.S. customer.[650] Nanjing Nanmu also admits to having had conversations over the telephone with the U.S. customer.[651] Furthermore, Nanjing Nanmu stated that it provided a catalog of its merchandise to the U.S. customer[652] and this catalog is the only evidence of marketing on the record. In addition, the U.S. customer described the sales to be between itself and Nanjing Nanmu, rather than between itself and the Chinese third party.[653] Also, the U.S. customer stated that Nanjing Nanmu made these sales in hopes of receiving further orders from the U.S. customer.[654] All of the above statements combined with the commercial invoices issued to the U.S. customer, demonstrate that not only was the U.S. customer aware of Nanjing Nanmu's identity throughout the sales process, it believed it was making purchases from Nanjing Nanmu. Accordingly, we find based on the aforementioned evidence that Nanjing Nanmu was directly involved in marketing subject merchandise to the U.S. customer and throughout the sales process the U.S. customer was aware of Nanjing Nanmu's identity.

(3) The Extent of the Foreign Producer's Interaction with the U.S. Customer on Product Testing and Other Technical Matters

Nanjing Nanmu stated that it corresponded with the U.S. customer regarding manufacturing techniques and that it provided a catalog of its merchandise to the U.S. customer.[655] Additionally, Nanjing Nanmu received shipment instructions from the U.S. customer.[656] Accordingly, we find that the record demonstrates that Nanjing Nanmu interacted with the U.S. customer on technical matters.

(4) The Extent to which the Foreign Producer Has Direct Contact with the End Customer

As stated above, Nanjing Nanmu held discussions by telephone with the U.S. customer, received written instructions regarding product specifications and manufacturing techniques, sent the U.S. customer a catalog, and received shipment instructions from the U.S. customer. Further, all of the sales documentation submitted by the U.S. customer stated that Nanjing Nanmu sold directly

[650] See Nanjing Nanmu's December 11, 2009 submission at Exhibit 1.
[651] See Nanmu Verification Report at 9.
[652] See Nanjing Nanmu's January 29, 2010 submission at 2 and Exhibit 1.
[653] See August 14, 2009 CBP Entry Data Memo.
[654] See Nanjing Nanmu's December 11, 2009 submission at Exhibit 2.
[655] See Nanjing Nanmu's January 29, 2010 submission at 2 and Exhibit 1.
[656] See Nanjing Nanmu's December 11, 2009 submission at 2 and Exhibit 1.

to the U.S. customer. Therefore, we find that Nanjing Nanmu had significant contact with the U.S. customer.

(5) Whether the Agent/Reseller Maintains Inventory

Nanjing Nanmu shipped the merchandise directly to the U.S. customer and thus it, rather than the Chinese third party, maintained inventory of the sales in question.[657]

(6) Whether the Agent/Reseller Takes Title and Bears Risk of Loss

Initially, Nanjing Nanmu submitted invoices that the sales in question were between Nanjing Nanmu and the U.S. customer, thus indicating that transfer of title passed directly between Nanjing Nanmu and the U.S. customer.[658] Later, Nanjing Nanmu stated and submitted documents which noted that Nanjing Nanmu sold the products to the Chinese third party which in turn sold the products to the U.S. customer.[659] This suggests that the Chinese third party took title and bore risk of loss. However, invoices submitted by the U.S. customer state that the sales were made by Nanjing Nanmu[660] which suggest that Nanjing Nanmu held title and bore risk of loss until such passed to the U.S. customer. We also note that Nanjing Nanmu made several statements, even after it submitted the conflicting invoices that the Chinese third party issued invoices on behalf of Nanjing Nanmu.[661] Accordingly, we find that, while the record is unclear, there is evidence which suggests that Nanjing Nanmu, and not the Chinese third party, held title or bore any risk in these transactions until such was passed directly to the U.S. customer.

(7) Whether the Agent/Reseller Adds Value to the Merchandise

Documents submitted later in the administrative review state that the Chinese third party received as income a markup on its resale;[662] however, the Chinese third party never took physical possession of the merchandise and, accordingly, there is no evidence that the Chinese third party added value to the merchandise in question.

Based on the totality of the evidence listed above, we find the sales at issue attributable to Nanjing Nanmu. While Nanjing Nanmu claims that the Chinese third party sets the price and shipment terms with the U.S. customer, additional statements by Nanjing Nanmu as well as information obtained from CBP and placed on the record by Nanjing Nanmu, supports a finding that all sales at issue were sales between Nanjing Nanmu and the U.S. customer. The commercial invoices listing the prices and other terms of sale list Nanjing Nanmu as the seller and the U.S. customer as the buyer, with no intermediate party listed. Nanjing Nanmu also stated that the Chinese third party issued the invoices containing these sales terms "on behalf of

[657] See Nanmu Verification Report at 4.
[658] See Nanjing Nanmu's September 14, 2009 submission at Exhibit 1.
[659] See Nanjing Nanmu's March 8, 2010 submission at 1-2 and Nanmu Verification Report at Exhibit 1.
[660] See Nanjing Nanmu's September 14, 2009 submission at Exhibit 1.
[661] See Nanmu Verification Report at 5.
[662] See Nanmu Verification Report at 5.

Nanjing Nanmu," and that Nanjing Nanmu made other proprietary statements indicating that it is appropriate to attribute the sales to itself.[663] Further, several types of contact between Nanjing Nanmu and the U.S. customer regarding marketing and technical matters support our finding, as do the facts that Nanjing Nanmu performs the export procedures, exports the products under its name, and maintains the subject merchandise in inventory. In addition, the Department notes that, unlike the Chinese third party, Nanjing Nanmu has an export license[664] which also weighs in favor of finding the sales to be attributable to Nanjing Nanmu. Therefore, based on the totality of the evidence, we find the sales in question are Nanjing Nanmu's sales.

Having determined that Nanjing Nanmu made sales of subject merchandise to the United States, there is no basis to rescind the administrative review request for Nanjing Nanmu. Accordingly, the Department is reviewing Nanjing Nanmu and must now determine whether Nanjing Nanmu is entitled to a separate rate.

Whether Nanjing Nanmu Has Demonstrated that It Is Separate From the PRC-Wide Entity

Nanjing Nanmu did not provide a separate rate certification or application.[665] However, the facts of this review demonstrate that Nanjing Nanmu should have submitted a timely separate rate certification given its sales of subject merchandise during the POR. For example, Nanjing Nanmu originally made a proprietary statement indicating that it should have submitted a separate rate certification.[666] Further, Nanjing Nanmu made sales of subject merchandise during the POR. The U.S. customer paid antidumping duties on the sales for which Nanjing Nanmu claimed to have not received any money and the antidumping duties paid were based on the prices on invoices containing Nanjing Nanmu's name.[667] In consideration of the above, the Department has determined that Nanjing Nanmu should have known that it made sales of subject merchandise during the POR and thus should have submitted a separate rate certification if it believed it was entitled to a separate rate in this review. In this regard, the Department notes that a separate rate certification is an abbreviated questionnaire which takes relatively minimal resources to complete.

While Nanjing Nanmu ultimately did offer to submit a separate rate certificate, this offer occurred more than seven months after separate rate certifications were due, and four months

[663] See the August 11, 2010 Memorandum titled "Proprietary Information in August 11, 2010 Issues and Decision Memorandum."
[664] See id. at 3-4.
[665] Because Nanjing Nanmu had a separate rate from a prior segment of this proceeding, to retain its separate rate status, Nanjing Nanmu was required to submit either a separate rate certification that none of its circumstances had changed, or if its circumstances had changed, a separate rate application. In this case, it appears that Nanjing Nanmu would have been required to submit the certification. While Nanjing Nanmu has suggested in its rebuttal brief at 3 that it submitted a separate rate certification, no such submission exists on the record of this review.
[666] See Nanjing Nanmu's September 14, 2009 submission at Exhibit 2 and the August 11, 2010 Memorandum titled "Proprietary Information in August 11, 2010 Issues and Decision Memorandum."
[667] See August 14, 2009 CBP Entry Data Memo.

after the Department had presented Nanjing Nanmu with evidence indicating that it had made unreported sales of subject merchandise. In fact, Nanjing Nanmu did not fully disclose its full explanation of why it had failed to report the sales in question until March 2010, well after the fully extended Preliminary Results were published, and nearly a year after separate rate certifications were due. At this point the Department determined that it did not have sufficient time to examine a separate rate certificate that Nanjing Nanmu might submit, issue any supplemental questionnaires, and then verify the information. Further, the Department notes that allowing parties to submit untimely separate rate certifications in circumstances such as Nanjing Nanmu's invites parties to "game the system" whereby they do not disclose to the Department a sale and then, only if the Department enquires further, do they provide the necessary information and a separate rate certification. Further, when in doubt with respect to a sale, parties must provide the Department with necessary information on a timely basis, or, at the very least, inform the Department of its questions or concerns in a timely manner so that the matter may be fully reviewed and addressed in a timely fashion during the proceeding.

For all these reasons, we have determined that Nanjing Nanmu failed to demonstrate its eligibility for a separate-rate and are treating Nanjing Nanmu as part of the PRC-wide entity.

Having determined that Nanjing Nanmu failed to report sales of subject merchandise to the Department and having determined that Nanjing Nanmu is part of the PRC-wide entity, we have considered whether it is appropriate to rely on facts available and AFA in determining the appropriate rate for the PRC-wide entity.

Use of Facts Available and Adverse Facts Available

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

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

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Total AFA to the PRC-Wide Entity, which includes Nanjing Nanmu

Nanjing Nanmu has argued that it has cooperated fully in this review. As an initial matter, the Department notes that it preliminarily determined that the PRC-wide entity failed to cooperate in this review and assigned the PRC-wide entity an AFA margin of 216.01 percent. No party has argued against this application of AFA to the PRC-wide entity. As part of the PRC-wide entity, this rate is also applicable to Nanjing Nanmu.

The Department also has analyzed Nanjing Nanmu's actions in this review and determined that Nanjing Nanmu's actions, as part of the PRC-wide entity, provide an additional basis for the application of AFA in this review. Because Nanjing Nanmu did not report sales of subject merchandise, we determine that the PRC-wide entity, of which Nanmu is a part, withheld necessary information requested by the Department in accordance with section 776(a)(2)(A) of the Act and significantly impeded this proceeding within the meaning of section 776(a)(2)(C) of the Act.

The Department finds that in not reporting these sales, the PRC-wide entity, which includes Nanjing Nanmu, has failed to cooperate by not acting to the best of its ability to comply with a request for information. In its Initiation Notice, the Department notified parties that they must timely submit Q&V questionnaire responses and separate rate applications or certifications in order to qualify for a separate rate.[668] Nanjing Nanmu did not provide shipment information in response to the Department's request for Q&V data. Not only did Nanjing Nanmu fail to respond to the Department's request for shipment data, but upon being presented with the evidence of its role in the shipments in question, it continued to withhold the role of the Chinese third party and also withheld its later explanation that the sales between the Chinese third party and the U.S. customer were made on invoices bearing Nanjing Nanmu's name.[669] Instead, Nanjing Nanmu attempted to portray the sales in question as sample sales and provided none of the details that it would only begin providing months later.[670] Because Nanjing Nanmu purportedly made the sales to the Chinese third party and knew of their ultimate destination, it had necessary information but decided not to provide it to the Department. In its initial

[668] See Initiation of Antidumping Duty Administrative Review, 74 FR 8776, 8777 (February 26, 2009) (Initiation Notice)
[669] See, e.g., Nanjing Nanmu's September 14, 2009 submission at 1-2.
[670] Compare the earlier responses: Nanjing Nanmu's September 14, 2009 submission at 2; Nanjing Nanmu's December 11, 2009 submission at 1-2; and Nanjing Nanmu's December 31, 2009 submission at 1-3 to Nanjing Nanmu's explanation of the sales process in its March 8, 2010 submission at 1-2.

submissions, nothing was mentioned of the Chinese third party or the explanation that despite sales being between the Chinese third party and the U.S. customer, Nanjing Nanmu's name was on the invoice. However, when the Department issued a supplemental questionnaire and explained that for sample sales to be excluded from consideration there must be a lack of consideration or transfer of ownership Nanjing Nanmu reported that it did not receive any payment at all, which was not what it had stated initially[671] and at this time the U.S. importer explained that it did not compensate Nanjing Nanmu for these sales.[672] Only after the Department questioned why Nanjing Nanmu would charge the U.S. customer nothing and yet the U.S. customer declared the sales to have value and paid antidumping cash deposits and ask for further sales documents did Nanjing Nanmu explain the existence of the Chinese third party and argue that Nanjing Nanmu's name should not have been placed on the sales in question.[673] Further, as described above, these later explanations contradict other explanations and documents on the record.

Throughout the proceeding, the Department uncovered the sales trace information piece by piece. When a new piece of the puzzle was uncovered, or a previous contention failed scrutiny Nanjing Nanmu would provide a new and often contradictory explanation. Nanjing Nanmu's initial refusal to report these sales demonstrated a failure to cooperate to the best of its ability. Nanjing Nanmu's failure to provide a full explanation when the Department presented it with the customs documentation is a large component of its failure to cooperate to the best of its ability.[674] In addition, Nanjing Nanmu presented explanations that contradicted each other or were otherwise inconsistent with documents on the record demonstrating Nanjing Nanmu's complete failure to cooperate to the best of its ability and belie its stated desire in its December 11, 2009 supplemental questionnaire response that it hoped to "help clarify that its no sales certification was made in good faith and in an effort to cooperate in the ongoing administrative review." Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity, which includes Nanjing Nanmu.

Selection of AFA Rates

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(l) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation or review, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents

[671] See Nanjing Nanmu's September 14, 2009 submission at Exhibit 2 the August 11, 2010 Memorandum titled "Proprietary Information in August 11, 2010 Issues and Decision Memorandum.".
[672] See Nanjing Nanmu's December 11, 2009 submission at 2 and Exhibit 1 see also the August 11, 2010 Memorandum titled "Proprietary Information in August 11, 2010 Issues and Decision Memorandum."
[673] See Nanjing Nanmu's explanations regarding the payment of U.S. customs duties at 2 and its answer to the follow up requests by the Department for more sales documentation in its January 29, 2010 submission at 1.
[674] See Nanjing Nanmu's September 14, 2009 reply to the Department's request that it explain the customs information contained in August 14, 2009 CBP Entry Data Memo.

to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[675] Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).[676] The CIT and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[677] Therefore, as AFA, the Department has continued to assign the PRC-wide entity a dumping margin of 216.01 percent. This margin is the highest calculated rate for a respondent on the record of any segment of the proceeding[678] and the Department has previously assigned this rate to the PRC-wide entity.[679]

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[680] Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[681] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[682]

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[675] See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998); see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939-40 (November 18, 2005); see SAA, accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1, at 870.

[676] See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009).

[677] See e.g. NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); see Kompass Food Trading International v. United States, 24 CIT 678, 683-84 (CIT 2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); see Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[678] See 2004-2005 New Shipper Review, 71 FR at 70741.

[679] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374, 41379 (August 17, 2009).

[680] See SAA at 870.

[681] See id.

[682] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof,

Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[683]

The 216.01 percent AFA rate is the highest calculated rate on the record of any segment of the proceeding and has been previously assigned to the PRC-wide entity. No additional information has been presented in the current review which calls into question the reliability of the information. This rate was calculated during the 2004-2005 semi-annual new shipper review of wooden bedroom furniture.[684] Thus, we have determined this information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.[685] Similarly, the Department does not apply a margin that has been discredited.[686] To assess the relevancy of the rate used, the Department compared the transaction-specific margins calculated for Fairmont in this instant administrative review with the 216.01 percent rate calculated in the 2004-2005 semi-annual new shipper review of wooden bedroom furniture. The Department found that the 216.01 percent margin was within the range of the margins calculated on the record of the instant administrative review. Since the 216.01 percent margin is within the range of transaction-specific margins on the record of the instant administrative review, the Department has determined that the 216.01 percent margin continues to be relevant for use as an AFA rate for the PRC-wide entity in this administrative review. In this regard, the Department notes that this rate has been previously assigned to the PRC-wide entity. As the Federal Circuit has recognized, the Department reasonably relies upon the presumption that the AFA rate established for an entity in a previous review remains valid unless evidence is offered that rebuts that presumption.[687] As noted above, no additional or rebutting information was presented in this case. Therefore, as the adverse margin is both reliable and relevant, the Department has determined that it has probative value. Accordingly, the Department has determined that this rate meets the corroboration criterion established in section 776(c) of the Act.

From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

[683] See SAA at 870; Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627, 35629 (June 16, 2003), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 62560 (November 5, 2003).

[684] See 2004-2005 New Shipper Review.

[685] See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

[686] See D & L Supply Co. v. United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated).

[687] See KYD, Inc. v. United States, 2010 U.S. App. LEXIS 10931 (Fed. Cir., May 28, 2010).

Comment 34: Labor

- Fairmont and the Coalition argue that the Department should value labor using the "wage" rate data for Philippine furniture producers as reported by the ILO in Chapter 5B of the ILO Yearbook of Labour Statistics (ILO Yearbook),[688] because the Department has a preference to "stay within one country for factor valuation because it leads to more accurate results than using factors from multiple countries."[689] Fairmont and the Coalition also argue that using wage rate data from outside the primary surrogate country will cause a mismatch between the labor FOP and the primary surrogate country wages in the denominator of surrogate financial ratios which are applied to the labor FOP.
- Fairmont suggests using contemporaneous "wage" rate data for the Philippines noting that "earnings" data from the Philippines are not contemporaneous with the POR. According to Fairmont, if contemporaneous wage rate data were used by the Department when calculating financial ratios, the Department could account for the fact that wages do not fully reflect certain remunerations received by workers (e.g., overtime, bonuses, or gratuities) by excluding these items, which are listed as separate line items, from the denominator of the ratios.
- Fairmont contends that Petitioners miscalculated the wage rate for Philippine laborers engaged in furniture production.[690] Fairmont notes that Petitioners used an average non-industry specific "normal" working hours rate from a previous time period to convert a monthly wage for furniture workers to an hourly rate, which they adjusted for holidays, vacation days, and sick days using data for the general population. Fairmont maintains Petitioners should have used Chapter 4B of the ILO Yearbook, which provides the average hours Philippine furniture laborers "actually" worked per week during the POR.[691]
- Fairmont argues that Petitioners are inappropriately making a request for the Department to consider countries outside the range the Department has traditionally identified as economically comparable to the PRC in order to expand the list of economically comparable countries.

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[688] Fairmont further notes that the Department's entry of factual information into the record at this point in this review, and well after the referenced Dorbest decision, only reinforces the errors of the Department's prior rejection as untimely of certain information that Fairmont submitted. In this action, the Department demonstrates that it still has time to consider significant amounts of data despite purported statutory deadlines. See Dorbest v. United States, 604 F.3d 1363 (Fed. Cir. 2010) (Dorbest).
[689] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Extension of Time Limit for the Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 74 FR 64663 (December 28, 2009), and accompanying Issues and Decision Memorandum at Comment 3, note 52.
[690] See Petitioners' April 19, 2010 submission at 125-126 and Exhibit 4.
[691] See Fairmont's July 19, 2010 submission at Exhibit 4.

- Fairmont argues that with the exception of the Philippines and El Salvador,[692] there is no evidence that labor data from any other countries under consideration are sufficient to calculate a surrogate value for labor because these countries do not have industry-specific data, "earnings" data or conversion information in Chapter 4B of the ILO Yearbook.
- With respect to the Department's regression-based wage rate calculation, Fairmont and the Coalition argue that this methodology contradicts 773(c)(1)(4) of the Act because it is based on countries which are not: (i) at a comparable level of development to the NME, and (ii) significant producers of comparable merchandise.[693]
- With respect to the labor rate data released by the Department, Fairmont asserts the following: (1) some of the countries whose data were released by the Department in connection with valuing labor should not be considered because they are not at a level of economic development comparable to the PRC (the PRC is classified as a lower-middle income country whereas these countries are not (e.g., Bosnia & Herzegovina or Colombia)) or they have insignificant exports of comparable merchandise or no exports during the POR (Fairmont notes that the export data relied upon in identifying significant producers could include re-exports or merchandise not comparable to subject merchandise); (2) if the Department values labor based on an average it should only use earnings data, not wage data, since earnings accurately reflect the remuneration received by workers and should only use earnings data specific to wooden bedroom furniture production; (3) Ukraine data should not be considered in valuing labor because workers in that country work significantly fewer hours than in other potential surrogate countries; (4) earnings data should be converted to hourly rates using information in Chapter 4B of the ILO Yearbook, rather than the Department's unsupported methodology; (5) a regression analysis based on the released wage rates would not accurately reflect the impact of per capita GNI on labor rates because the labor rates were inflated to 2008 values but the GNI data are for 2007. It is faulty to assume that past per-capita GNI impacts future wages. Per capita GNI can change significantly in a year. Fairmont and the Coalition also argue that the consumer price index should not be used to inflate wage rates, particularly when contemporaneous data are available, because increases in wages do not always keep pace with inflation.
- Fairmont and the Coalition argue that the Department's working hypothesis that there is a statistically valid relationship between wages and GNI is not supported by the record. Fairmont and the Coalition argue that there appears to be variation between wages and GNI per capita which indicate that country-specific factors may play an important role in influencing wage rates for countries toward the lower end of the economic development spectrum. The Coalition also argues that going outside the primary surrogate country would "infect" the cost structure of the primary surrogate country with factors that have no connection to labor costs in the Philippines.

[692] See Fairmont's July 22, 2010 submission at 6. Fairmont excludes the Indian wage rates because the data is not contemporaneous with the POR (i.e., the 2008 calendar year). The Indian data is from 2006. Fairmont also notes that corrections have been made to the SV calculations for labor using data from the ILO and the Philippine Bureau of Labor and Employment Statistics. See Fairmont's July 22, 2010 submission at Exhibit 1.
[693] See Allied Pac. Food (Dalian) Co. v. United States, 587 F. Supp. 2d 1330, 1360 (CIT 2008).

- The Coalition argues that if the Department uses data from countries outside of the Philippines, it should not use countries with a GNI above Peru's (USD 3,450). The Coalition argues that Peru was identified as having the highest comparable GNI in the Department's April 24, 2009 Surrogate Country Memorandum and that the Department has not identified any changes that would impact the parameters of identifying comparable countries.
- Fairmont dismisses Petitioners' relative GNI range argument (Petitioners argued for using high and low "bookend" GNI figures that are equal multiples of the PRC's GNI (e.g., 2.54 times higher and 2.54 times lower than the PRC's GNI)) claiming it would result in using data from countries whose per capita incomes are up to USD 1,460 less than the PRC's (i.e., India) to those whose per capita incomes are up to USD 3,650 greater than the PRC's (i.e., Brazil). Fairmont argues that the use of this method for determining economically comparable countries would skew the number data points to those with per capita incomes greater than the PRC.
- Petitioners argue that the regression based methodology applied in the Preliminary Results is consistent with the Act, provides the best available information for calculating surrogate labor wage rates, and provides the best estimate of an NME country's labor wage rate based on its per-capita GNI while avoiding aberrational calculations that would result from using alternative methods.[694]
- Petitioners argue that the Department's use of a large pool of ME countries in this case produces a highly reliable wage rate based on the observed correlation between per capita GNI and hourly wage rate.
- Petitioners oppose limiting the number of countries to calculate a wage rate noting that the Department has found that "there is no direct correspondence between significant levels of production and input price or availability" and "it is appropriate to place less weight on the significant producer criterion, because economic comparability is more indicative of appropriate labor rates."[695] Regarding economic comparability, Petitioners note that the Department concluded that "more data is better than less data" and "averaging of multiple data points (or regression analysis) should lead to more accurate results."[696]
- Petitioners argue that nearly all of the issues raised by the respondents are resolved by Blankets, Pencils, and Ribbons[697] and that the Department's methodology was appropriate in these cases. Petitioners argue that the Department should continue using

[694] See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 at 61720-21 (October 19, 2006); see Wooden Bedroom Furniture From The People's Republic Of China, Final Results Of Redetermination Pursuant To Court Remand, Dorbest Ltd. v. United States, CIT Ct. No. 05-00003 (May 25, 2007) at 12-31.
[695] See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27367 (May 19, 1997).
[696] See id.
[697] See Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 38980 (July 7, 2010) (Pencils). See Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010) (Blankets). See also Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808 (July 19, 2010) (Ribbons).

as large a dataset as possible to value labor in order to avoid the unreliability and arbitrariness that would come from using data from only one country or a small dataset. Petitioners further argue that nothing in Dorbest requires the Department to value labor in a single surrogate country[698] and that, since Dorbest, the Department has continued to calculate labor rates using a broad basket of countries.[699] However, Petitioners note that if the Department ultimately concludes that it must use a wage rate from one country, it should use the detailed information published by the Philippine Bureau of Labor and Employment Statistics, which is a government agency that publishes wage data that are specific to the Philippine furniture industry.[700]

- Petitioners argue that by adding wage rate data to the record in order to revise its wage rate calculations the Department has recognized the CAFC's Dorbest decision and that by using data from countries that are economically comparable to the PRC and that produce comparable merchandise, the Department will comply with the statute and address the concerns expressed by the PRC's Ministry of Commerce in its June 8, 2010 letter.
- Petitioners argue that the Department should continue to use export data to identify significant producers of subject merchandise as it has already rejected a similar argument to abandon export data.[701] Petitioners also note that Fairmont has provided no evidence showing that any export data contained in the Department's Labor Wage Rate Memo reflect "re-exports" or exports of goods that have only been "finished" in the exporting country.
- Petitioners argue that Fairmont is mistaken when it argues for the exclusion of countries because "none of these countries exported significant quantities of merchandise comparable to wooden bedroom furniture during the POR."[702] Petitioners note that Fairmont provides no explanation for its definition of what constitutes a significant amount. Petitioners further note of the countries excluded, some either had exports during 2007 or the export data for 2008 and 2009 is not yet available.
- Petitioners argue that the Department should use relative GNI ranges (ratios of GNI) instead of absolute GNI ranges (actual income dollars) to identify the low-and high-income "bookend" countries. Petitioners argue that the Department should use a GNI range where the high income "bookend" country has a GNI that is 2.54 times greater than the PRC because the PRC's GNI is 2.54 times greater than India which is the lowest

[698] To the contrary, Dorbest states that the Department may base the labor rate on that "subset" of countries that are both economically comparable to the PRC and are significant producers of comparable merchandise. Dorbest, 604 F.3d at 1372. Dorbest invalidated a different regulation, 19 CFR 351.408(c)(3), that required the Department also to include data from countries that were not economically comparable to the PRC or were not significant producers. See id.

[699] See Blankets, Pencils, and Ribbons. Petitioners note that neither Fairmont nor the Coalition make any attempt to dispute the Department's reasoning or conclusions in these cases.

[700] See Fairmont's March 15, 2010 submission at Exhibit 6 at 96. This includes information for Philippine Standard Industrial Classification (PSIC) D36, "Manufacture and Repair of Furniture."

[701] See Fairmont's July 19, 2010 submission at 4; see Pencils at Comment 1; see Blankets at Comment 13. The Department did not address this issue in Ribbons because no party challenged the use of export data for this purpose. See Ribbons at Comment 8.

[702] See Fairmont's July 19, 2010 submission at 4.

country on the list. Petitioners also argue that by using absolute GNI ranges the list of economically comparable countries is biased in favor of lower GNI countries.[703]

- Petitioners argue Fairmont's "upper middle income" and "lower middle income" argument is meritless as the Department does not rely upon these designations, which employ arbitrary dividing lines, in determining economic comparability to the PRC.
- Petitioners argue that the Department should continue to use pre-POR "earnings" data, as adjusted for inflation, before resorting to the use of contemporaneous "wages" data; however, where earnings data are unavailable it should use wage data instead of excluding countries.
- Petitioners argue that the Department should not exclude countries that fail to report "industry specific" wage data, as its practice, both pre- and post-Dorbest, has been to use country-wide, not industry-specific, labor rates.[704] Petitioners further argue that the data category claimed by the respondents to be specific to the furniture industry is actually a catch-all category that includes industries beyond furniture production.
- Petitioners argue that the Department should exclude India from the wage rate calculation because the ILO data for India are incomplete and unusable. Petitioners argue that the ILO survey for India encompasses only those workers earning less than 1,600 rupees per month (6,500 rupees after 2005) and that this is corroborated by the Indian government.
- Petitioners argue that data from the Ukraine should not be excluded as the Department has previously determined it to be an ME country and as part of that decision, the Department found that "employees and management may freely negotiate wages, and workers have the right to unionize and engage in collective bargaining."[705]
- Petitioners request that the Department make corrections to the data in the Labor Wage Rate Memo for El Salvador, Guatemala, and Paraguay. Petitioners argue that the June 22, 2009 memorandum from the Office of Policy was not generated with the intention of identifying all economically comparable countries.
- Petitioners contend that the Department should continue to use its longstanding conversions to state labor rates on an hourly basis as Fairmont has provided no evidence that the Department's conversions used to derive hourly rates from data stated on a daily, weekly, or monthly basis are inappropriate or distortive. Petitioners also argue that the Department should reject Fairmont's suggestion to apply certain conversion factors from Chapter 4B of the ILO Yearbook to the Chapter 5B earnings and wage data used in the labor rate calculations[706] because Fairmont fails to demonstrate that the data in Chapter 4B were derived from the same sources as those in Chapter 5B.

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[703] Petitioners provide the current GNI per capita data, Atlas Method (current US dollars), as reported by the World Bank for 2007 and 2008. Petitioners also provide country-specific export statistics from the Global Trade Atlas for Harmonized Schedule Codes 9403.50 and 7009.92 as well as, raw ILO wage data for all countries with GNI's up to 2.54 times the PRC's 2007 GNI and exchange rate information from the International Monetary Fund (IMF); and CPI data from the IMF. In addition Petitioners have submitted the list of economically comparable countries based on 2007 data using the same relative range. See Petitioners' July 19, 2009 submission at Exhibit 1-4.

[704] See Ribbons at Comment 8. See Pencils at Comment 1; see also Blankets at Comment 13.

[705] See Final Results of Inquiry Into Ukraine's Status as a Non-Market Economy Country, 71 FR 9520 (February 24, 2006) (Ukrainian Graduation).

[706] See Fairmont's July 19, 2010 submission at 6 and Exhibit 4.

- Petitioners argue that the Department should not adjust the labor portion of the surrogate financial ratios as argued for by the Coalition if the Department decides to base the labor rate on information from countries other than the Philippines. Petitioners argue the Coalition's argument reflects a misunderstanding of how the financial overhead ratios are used for NV purposes noting that the Department calculates the Chinese respondents' overhead and SG&A expenses as a percentage of their ML&E costs based on ratios derived from the Philippine surrogate producers' financial statements and that Fairmont may pay more or less (based upon the surrogate data) for its various inputs, including labor, than the Philippine companies. Even if the respondents were correct that an adjustment to the financial ratios were appropriate there would be no way to calculate such an adjustment as the Coalition's proposal simply assumes that each surrogate company paid its workers the USD 0.71/hr rate proposed by the respondents; however, because the record does not show the wage rates actually paid by the surrogate Philippine producers it is impossible to calculate this adjustment.[707]

Department's Position:

As a consequence of the CAFC's recent ruling in Dorbest, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these final results, we have calculated an hourly wage rate to use in valuing Fairmont's reported labor input by averaging earnings and/or wages in countries that are both economically comparable to the PRC and significant producers of comparable merchandise. The Department has determined that the best available information for calculating a wage rate is based on multiple surrogate countries rather than an individual surrogate country.

Fairmont and the Coalition argue that the Department should use the hourly wage rate for only the Philippines as an alternative to our previous regression-based wage rate. The Department disagrees. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNI. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable MEs. As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 4,100), the hourly wage rate spans from USD 0.41 to USD 2.08.[708] Additionally, although both India and Guatemala have GNIs below USD 2,500, and both could be considered

[707] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comments 15 and 16.

[708] See "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.

economically comparable to the PRC, India's observed wage rate is USD 0.47, as compared to Guatemala's observed wage rate of USD 1.14 – over double that of India.[709] There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, data from multiple surrogate countries are better than data from a single surrogate country for purposes of valuing labor. Accordingly, the Department has employed a methodology that relies on a larger number of comparable countries in order to minimize the effects of the variability that exists between wage data of individual comparable countries. Although Fairmont and the Coalition argue that using wage data from countries other than the Philippines will cause a mismatch between the labor calculation and the denominator of the surrogate financial ratios, the Department finds this argument to be misplaced. While the Department has a preference of selecting SVs from a single surrogate country, it often has to rely on SVs from multiple surrogate countries because the SV from the primary surrogate country is not the best information available on the record. Similarly, in this case, as described above, the Philippine wage rate does not constitute the best information on the record of this review.

In order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Preliminary Results. Early in this review, the Department selected six countries for consideration as the primary surrogate country for this review. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.[710] The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this review, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Colombia, Thailand, and Peru. The Department used the high- and low-income countries identified in the Preliminary Results as "bookends" and then identified all countries in the World Bank's World Development Report for 2007 with per capita incomes (using the 2007 GNIs from the 2009 Expected Wages of Selected NME Countries) that placed them between these "bookends." This resulted in 52 countries, ranging from India and Yemen with USD 950 GNI to Colombia and Namibia with USD 4,100 GNI.[711]

With respect to Fairmont's argument that the Department should not use countries outside the GNI band of countries which were identified as economically comparable to the PRC in the Surrogate Country Memorandum, the Department has not used countries outside those identified

[709] Id.
[710] See 19 CFR 351.408(b).
[711] See Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Labor Wage Rate," dated July 14, 2010 and Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Wage Rate Calculation-Error in Currency Conversion of the Hourly Wage Rate for El Salvador," dated July 15, 2010.

in the Surrogate Country Memorandum. However, the Department is using updated GNI data for the countries identified in its Surrogate Country Selection Memorandum. For the World Bank data source from which the Department determines economic comparability, there is a two year lag between the reporting period and when that GNI is published in the World Bank data source.[712] The Department relied on the most recent GNI per capita data available for this proceeding at the time that economic comparability was determined for this case.

In determining the economic comparability of countries for the purposes of factor valuation, the Department does not rely on the World Bank's reported upper-middle or lower-middle income "thresholds." The band of countries that the Department selected is, in absolute terms, a reasonable range of countries given the entire worldwide range of GNIs. Simply because a small subset of the band lies above the World Bank's "threshold" is not a basis to reject it as a country that is not economically comparable.

The Department finds that the selection of the range of economically comparable countries based on absolute GNIs is reasonable and consistent with the statute. As a preliminary matter, Petitioners provide no legal basis for the argument that the Department should use relative GNI ranges when determining economically comparable countries for purposes of determining wage rates, but rely on absolute GNIs when determining economically comparable countries for purposes of determining the primary surrogate country for valuing all other FOPs. The Department has a long-standing and predictable practice of selecting economically comparable countries on the basis of absolute GNI, and nothing in Petitioners' submissions undermines the reasonableness of that practice.

With respect to Petitioners' hypothetical example, it is an example that is not grounded in the facts of this case. It compares an extreme GNI range, from Burundi (USD 140) to Luxemburg (USD 81,600), a difference of over USD 80,000. This hypothetical example is not instructive or dispositive of the merits of using absolute GNI ranges in this review because it does not address the range that the Department actually selected. In this proceeding, the Department selected a range that extends from India (USD 950) to Colombia (USD 4,100). The result is that the differences between the lowest "bookend," India (USD 950) and the PRC (USD 2,360) (USD 1,401) and the highest "bookend," Colombia (USD 4,100) and the PRC (USD 2,360) (USD 1,740), are not substantial. These ranges are not meant to reflect a numerical threshold and, given that GNIs are updated on an annual basis, the countries that the Department determines are "economically comparable" will change on an annual basis as well. The GNI ranges in this review, nonetheless, illustrate that our current analysis results in an overall range far less than the USD 80,000 range used in Petitioners' hypothetical example. Therefore, the Department's selection of this narrow range using absolute GNIs is reasonable and consistent with the requirements of section 773(c)(4)(A) of the Act that the Department use MEs that are "at a level

[712] See World Bank's World Development Report for 2007. We note that subsequently the World Bank has updated reported GNIs. See also the 2009 Expected NME Wage rates that were used to update the 2007 GNIs, found at <http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html.>.

of economic development comparable to that of the NME country."[713]

Regarding the second criterion of "significant producer," the Department identified all countries which have exports of comparable merchandise (defined as HTS 9403.50 and 7009.92, which are identified in the scope of the order) between 2007 and 2009.[714] After screening for countries that had exports of comparable merchandise, we found that 36 of the 52 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a "significant producer" as a country that has exported comparable merchandise during the period 2007 through 2009. We disagree with Fairmont and the Coalition that *only* net exporters or significant exporters to the United States can be considered significant producers.[715] The antidumping statute and regulations are silent in defining a "significant producer," and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 733(c) of the Act. Moreover, while the legislative history provides that the "term 'significant producer' *includes* any country that is a significant net exporter,"[716] it does not stipulate a specific metric that must be used to determine whether a country is a significant producer.

In practice, the Department has relied on other indicia for determining whether a country is a significant producer. For example, in the last administrative review of the antidumping duty order on wooden bedroom furniture from the PRC,[717] the Department relied on production data for selecting the primary surrogate country. In this case, we have relied on countries with exports of comparable merchandise as significant producers. In regards to Fairmont's arguments concerning the export data for significant producers, the Department finds that Fairmont has not supported its allegation that the presence of exports does not necessarily indicate that a country produces comparable merchandise. Specifically, Fairmont has placed no evidence on the record to support its allegation that the export data that the Department is relying on may include re-exports or exports of comparable merchandise that were only assembled, not produced, in the exporting country. Fairmont points to a working paper entitled "Asia-Pacific Forestry Sector Outlook Study II: Philippines Forestry Outlook Study" to support its allegation that the export

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[713] Petitioners' argument that the range of economically comparable GNIs should be somehow "centered" on the basis of relative GNIs is unpersuasive, given that the Department has determined to continue using absolute GNI for its analysis. The absolute difference between the upper (USD 1,740) and lower (USD 1,410) range of the "bookends" in this case is USD 330 – an unsubstantial amount considering the broad range of worldwide GNIs available and the absolute range of GNIs for economically comparable surrogates in this review (USD 3,150). Moreover, it would be unreasonable to expect that the Department can or should always ensure that the upper range and lower range are equivalent since the underlying data does not permit such mathematical precision.

[714] The export data is obtained from the Global Trade Atlas. See Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Labor Wage Rate," dated July 14, 2010.

[715] See Fairmont's July 19, 2010 submission at 8 and the Coalition's July 19, 2010 submission at 2 and 4-5.

[716] See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

[717] See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372 (February 9, 2009) (unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009).

data may include exports other than merchandise comparable to wooden bedroom furniture because the HTS category is too broad. However, the working study discusses only the export performance of forest-based furniture since 2001, which is a broader category of data than the HTS categories used by the Department. Thus, we find that Fairmont has not demonstrated how the HTS categories used by the Department include exports other than comparable merchandise.

For purposes of valuing wages in this review, the Department determines the following 36 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Albania, Algeria, Belize, Bhutan, Bolivia, Bosnia & Herzegovina, Cape Verde, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Macedonia, Mongolia, Morocco, Namibia, Nicaragua, Paraguay, Peru, the Philippines, Samoa, Sri Lanka, Sudan, Swaziland, Syria, Thailand, Tunisia, Ukraine, and Yemen.

From the 36 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has relied upon ILO Chapter 5B data "earnings", if available and "wages" if not.[718] We used the most recent data within five years of the base year (2007) and adjusted to the base year using the relevant CPI.[719] Of the 36 countries that the Department has determined are both economically comparable and significant producers

[718] The Department maintains its current preference for "earnings" over "wages" data under Chapter 5B. See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61721 (October 19, 2006) (explaining that "earnings" more accurately reflect the remuneration received by workers) ("Antidumping Methodologies"). However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a "wage" rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies still applies for selecting among multiple data points within the "earnings" or "wage" data. This allows the Department to maintain consistency as much as possible across the basket.

[719] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department's calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Wage Data," dated July 13, 2010 for CPI data placed on record, obtained from the International Monetary Fund's International Financial Statistics.

of comparable merchandise, 13 countries, i.e., Algeria, Belize, Bhutan, Bolivia, Cape Verde, Morocco, Namibia, Samoa, Sudan, Swaziland, Syria, Tunisia, and Yemen, were not used in the wage rate valuation because there was no earnings or wage data available. As discussed below, the Department has also determined not to use the Honduran wage rate. The remaining countries reported either earnings or wage rate data to the ILO within the last five years.[720]

With respect to Fairmont's argument to use the hours worked from Chapter 4B of the ILO Yearbook data to convert daily, weekly, or monthly earnings and wages data, the Department finds that Fairmont has not demonstrated that the wages reported in Chapter 5B are linked to the hours reported in Chapter 4B. Additionally, in comparing wages and hours reported in these chapters, there are data points for countries and years in Chapter 5B that are not in Chapter 4B or vice versa. Thus, the Department will continue to use the conversion rate that the Department has relied on in previous cases.

The Department, therefore, relied on ILO Yearbook Chapter 5B data from the following countries to arrive at its wage rate in these final results: Albania, Bosnia & Herzegovina, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, India, Indonesia, Jordan, Macedonia, Mongolia, Nicaragua, Paraguay, Peru, the Philippines, Sri Lanka, Thailand, and Ukraine. The Department calculated a simple average of the wage rates from these 22 countries. This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

We also do not agree with Fairmont that, for this administrative review, the record supports using the industry-specific wage data from Chapter 5B of the ILO Yearbook to value labor. The Department did not receive this "industry specific" wage data until July 19, 2010 and therefore, has not had sufficient time to research the details regarding these data points. Although at first glance this information may appear to be more specific than data derived from the economies of the surrogate countries as a whole, the proposed industry-specific category 36 – "manufacture of furniture; manufacturing NEC" – includes subject merchandise as well as other furniture production (e.g., metal, glass, plastic, leather) and those industries "not elsewhere classified {"NEC"}." For example, the second category "manufacturing NEC" includes a broad range of products unrelated to the merchandise in this review, such as musical instruments, jewelry, umbrellas, pens, pencils, games and toys, sporting goods, etc.[721] Furthermore, there is no information on the record that would indicate how wages from the furniture category and the other manufacturing sectors are weighted or combined. The Department notes that different countries use different standards in reporting data under the ILO data sets.[722] Thus, each country might report an "industry specific" wage rate that is based upon its own distinct definition of the

[720] See Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Wage Data," dated July 13, 2010 for wage data from ILO's Yearbook.
[721] See Petitioners' March 4, 2010 submission at Exhibit 11F.
[722] For example, India and Indonesia do not report the industrial category 36 "Manufacture of Furniture; Manufacturing NEC" and instead report a category "332 Manufacture of furniture and fixtures , except primarily of metal." See Respondents' July 19, 2010 submission at Exhibit 2.

"industry." Additionally, the Department notes that of the 36 countries identified as both economically comparable to the PRC and significant producers of wooden bedroom furniture only 13 reported the labor rate category which Fairmont claims is specific to furniture production. It is unclear why the remaining 23 countries have exports of subject merchandise yet did not report wages for this industry category, and there is no information on the record that would provide such an explanation.

Given the inconsistency across countries and the resultant ambiguity of products covered within the proposed industrial category, and other remaining questions about this data, the Department does not believe that these data are the best information available on the administrative record of this proceeding for determining a surrogate wage rate. Accordingly, until the Department has a greater understanding of this data, it does not believe that the use of this information alone, or in some combination with the data from the remaining 23 countries not included in this data source, is appropriate in light of the issues identified with respect to this data. Therefore, the Department will use economy-wide wage data derived from Chapter 5B of the ILO Yearbook in its calculation of a surrogate wage rate for these final results.

In response to Fairmont's argument concerning Ukraine, the Department determined in 2006 that Ukraine was an ME, which included an analysis of that country's labor market and labor laws.[723] Ukraine's wages reflect labor laws and policies that may differ from those in certain other market economies. However, this is not unexpected given the Department's understanding of the differing labor laws and policies across countries described above. Indeed, as we have explained, this very point supports the Department's preference for the use of an average wage rate derived from a basket of countries, instead of relying on a single surrogate country. Thus, we do not believe that Ukraine's labor laws undermine its usefulness for purposes of our surrogate value methodology.

The Department disagrees with Fairmont's argument that the Philippines and El Salvador are the only countries with useable data. As noted above, the Department has used the earnings or wage data from 22 countries that the Department found both economically comparable to the PRC and significant producers of comparable merchandise to calculate the SV for labor. Moreover, the Department disagrees with Fairmont's arguments above that it should use industry-specific data, "earnings" data, and the conversion information from Chapter 4b of the ILO Yearbook and should, therefore, exclude all countries that do not have such data.

With respect to Petitioners' arguments about India and the ILO survey methodology, we do not believe that there is sufficient evidence on the record to undermine the validity of the Indian wage rate. According to the notes to the ILO survey methodology, the ILO survey is conducted pursuant to the Factories Act of 1948. However, those notes also refer to the Payment of Wages Act of 1936, as amended in 1982, which covered employees making 1,600 rupees ("Rs") per month or less. Those notes have not been updated since 1995, which leads us to believe that, until recently, the survey was intended to cover those making 1,600 Rs per month or less. In

[723] See Ukrainian Graduation and accompanying Issues and Decision Memorandum.

2005, the Payment of Wages Act of 1936 was amended, raising the application to those making 6,500 Rs per month or less (about USD 162), thereby covering more workers in India. Petitioners argue that this amount acts as a hard cap on those surveyed, and therefore covers only the "lowest paid" of Indian workers. We disagree with this assessment of the record.

Although it is also our understanding that the Payment of Wages Act of 1936 is limited to employees earning 6,500 Rs or less, neither the survey, nor the Factories Act of 1948, appear to be so limited by Indian law. The record shows that for at least four different years, India reported a national average wage rate or industry-specific wage rate to the ILO that surpassed this alleged "cap." For example, in 2004, India reported a national wage of 1,732 Rs per month when the "cap" was 1,600, and in 2006 India reported an industry specific wage of 6,678 Rs per month at the time the "cap" was 6,500 Rs per month. This would mean that for those years, either for the country as a whole, or for specific industries, there were employees collecting wages over that amount and that the "cap" was simply not considered binding for the survey coverage. Furthermore, there are additional examples during that period in which the overall average or the industry-specific average met, or came near to, the alleged "cap" amount. Unless almost all workers surveyed were being paid nearly the same wage (which seems unlikely), it is reasonable to presume that there were workers surveyed that earned more than the alleged "cap." The record evidence indicates therefore that India does not treat the 6,500 Rs amount for the 2006 wage rate as a hard cap, but rather possibly as a guideline.

In light of this fact, we also question Petitioners' claim that only the "lowest paid" of Indian worker wages are covered by this amount. Assuming the guideline is generally considered in conducting the survey, only those workers earning over the 6,500 Rs per month or more might be excluded. There is no evidence on the record to suggest that this guideline would exclude a significant portion of workers in India's manufacturing sector. Petitioners have provided no information on the record for which the Department can compare this amount to average wages throughout India. For example, the record contains no information with respect to the 2006 minimum wages in India, or any other industry specific minimum wage amounts. Thus, the Department has no means on this record of knowing whether or not 6,500 Rs per month applies only to the "lowest paid" employees, as argued by Petitioners, or in fact to the vast amount of manufacturing wages in India. Accordingly, we have concluded based upon the record evidence the ILO wage data point for India is not distorted and we will continue to use it in our calculations for this review.

With regards to the Honduran wage rate provided by the ILO, the Department is rejecting this wage rate since the Department determined in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum (Vietnam Shrimp) at Comment 10 that this wage rate is inaccurate, possibly due to an ILO reporting error. As explained in Vietnam Shrimp, the effective Honduran minimum wage during the same year as the underlying ILO data (2006) is USD 91.99 per month. With the assumption that the current reported ILO wage rate is USD 0.17, a worker would earn an average monthly wage of USD 32.64, a third of the minimum wage rate. Therefore, consistent with the Department's determination in Vietnam Shrimp, the Department finds that the reported wage rate for Honduras is unreliable and is rejecting the Honduran wage rate for the purposes of averaging surrogate wage rates in this administrative review.

In addition, the Department disagrees with the Coalition's argument that the Department should not use the CPI to inflate wages and therefore, the Department should not inflate the wage rates. The Coalition has not provided sufficient evidence that the Department should treat labor differently from other FOPs such that uninflated wage rates would be more accurate than wage rates inflated using CPI. Nor have they provided an alternative method to inflate the labor wage. It is a fact that inflation existed in the countries during the years in which this data was collected, and notably the Coalition doesn't challenge this point. Thus, the Department continues to consider CPI to be the best available information to capture the inflation within a country, including its labor wage rates.

The Department agrees with Petitioners that the use of more recent wage data for El Salvador and Guatemala is warranted, because the 2008 wage data is reliable and useable. See the February 1, 2010 Surrogate Value Memorandum for the Preliminary Results. On the other hand, the Department noted in Expected Non-Market Economy Wages: Request for Comments on 2009 Calculation,[724] the 2007 and 2008 ILO earnings data from Paraguay appear to be aberrant, and may be the result of a typographical or reporting error by the ILO Web site. The Department has therefore used the 2003 ILO earnings data from Paraguay for its calculation.

The Department disagrees with the Coalition's argument that it should not use the Philippine wage rate data from 2003 instead of 2008 data. The 2003 Philippine wage data are for monthly earnings whereas the 2008 data are for wages. As noted above, the Department will continue to rely upon ILO Yearbook Chapter 5B data "earnings," if available, and therefore, will continue to use the 2003 "earnings" data for the Philippines.

[724] See Expected Non-Market Economy Wages: Request for Comments on 2009 Calculation, 74 FR 51555, 51556 (October 7, 2009), unchanged in 2009 Calculation of Expected Non-Market Economy Wages, 74 FR 65092 (December 9, 2009).

Finally, without reference to any legal provision, Fairmont argues that the Department has unlawfully denied Fairmont an opportunity to comment on the wage rate methodology.[725] The Department disagrees that Fairmont has not had a chance to comment on the wage rate methodology in this administrative review as evidenced by its two submissions on this matter.[726] Furthermore, the Department has placed all the data it is has obtained pertaining to the wage rate methodology on the record and invited parties to comment on this information.[727] Thus, the Department has complied with the statutory requirement contained in section 782(g) of the Act.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree_________ Disagree_________

____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

____

Date

[725] See Fairmont's July 19, 2010 submission at 2.
[726] See Fairmont Case Brief Vol. II at 50-54 and Fairmont's July 19, 2010 submission.
[727] See Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Wage Data," dated July 13, 2010.

Attachment: Acronyms and Abbreviations

ACRONYM AND ABBREVIATION TABLE	
All cites in this table are listed alphabetically by acronym/abbreviation	
Acronym/Abbreviation	**Full Name**
Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
Aosen	Shanghai Aosen Furniture Co., Ltd.
APO	Administrative Protective Order
AUV	Average Unit Value
Berbenwood	Berbenwood Industries, Inc.
BPI	Business-Proprietary Information
CAD	Computer Aided Drafting
C&F	Cargo and freight
CAFC	Court of Appeals for the Federal Circuit
Carex	Carex Shipping, LLC
Carmarines Sur	The Cost of Doing Business in Caramines Sur
CBP	U.S. Customs and Border Protection
CEA	Central Electricity Authority of India
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIF	Cost, Insurance, and Freight
CIT	Court of International Trade
Citric Final	Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009)
Coalition	Coaster Company of American, Emerald Home Furnishings, LLC, Trade Masters of Texas, Inc. and Star International Furniture, Inc., importers of the subject merchandise, and COE Ltd, a separate rate respondent (the Coalition)
COGS	Cost of Goods Sold
COM	Cost of Manufacture
CONNUM	Control Number
COP	Cost of Production
COS	Cost of Sales

Coronal Enterprises	Coronal Enterprises Co., Ltd.
CPI	Consumer Price Index
CVD	Countervailing Duty
Department	Department of Commerce
DGSR	Dongguan Sunrise Furniture Co.
Doing Business in the Philippines	World Bank Group's survey, entitled "Trading Across Borders"
Dongguan Wanhengtong	Dongguan Wanhengtong Industry Co., Ltd.
EP	Export Price
EPE sheet	Expanded polyethylene sheet
EVA	Ethylene vinyl acetate
FA	Facts Available
FDI	Fairmont Designs International Co., Ltd.
FDUSA	Cambium Business Group, Inc. (d.b.a. Fairmont Designs)
Final Results Analysis Memo	August 11, 2010, Memorandum entitled, "Wooden Bedroom Furniture from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Fairmont Designs."
Final Results SVMemo	August 11, 2010, Memorandum entitled, "Wooden Bedroom Furniture from the People's Republic of China: Surrogate Values Memorandum."
Fish Fillets Final	Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010)
FOB	Free on board
FOP(s)	Factor(s) of production
GAAP	Generally Accepted Accounting Principles
GNI	Gross National Income
GOC	Government of China
Great Rich	Great Rich (HK) Enterprises Co., Limited
HAPUA	Heads of ASEAN Power Utilities/Authorities
HTS	Harmonized Tariff Schedule
ILO	International Labor Organization
ISE	Indirect Selling Expense
KGS	Kilograms

Kunyu	Kunyu Furniture Co., Ltd.
Linea	Linea Furniture, Inc.
LWUA	Philippines Local Water Utilities Administration
M3	Meters cubed
ME	Market economy
MEPs	Market economy purchases
Meralco	Manila Electric Company
ML&E	Materials, labor and energy
MT(s)	Metric ton(s)
Nanjing Nanmu	Nanjing Nanmu Furniture Co., Ltd.
NME	Non-market economy
NSO	Philippine National Statistics Office
NV	Normal value
OH	Overhead
Petitioners	American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc.
Philippine Tariff Commission	Republic of the Philippines Tariff Commission
PHP	Philippine pesos
POI	Period of Investigation
POR	Period of Review
PRC	People's Republic of China
Preliminary Results Analysis Memo	February 1, 2010, Memorandum entitled, "Wooden Bedroom Furniture from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Fairmont Designs."
Preliminary Results SVMemo	February 1, 2010, Memorandum entitled, "Wooden Bedroom Furniture from the People's Republic of China: Surrogate Values Memorandum."
PWPA	Philippine Wood Producers Association
PVC	Polyvinyl chloride
Q&V	Quantity and Value
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, 838 (1994)
Season Furniture	Season Furniture Manufacturing Co., Ltd., and Season Industrial Development Co., Ltd.

SF	Square Feet
SG&A	Selling, general and administrative expenses
Starcorp	Collectively, Shanghai Starcorp Funiture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd.
WBF Surrogate Country Memo	April 24, 2009 Memorandum to Howard Smith from Kelly Parkhill in response to Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China
SV	Surrogate Value
TCSR	Taicang Sunrise Wood Industry Co., Ltd.
URAA	Uruguay Round Agreements Act
WTA	World Trade Atlas® Online (Indian and Philippine import statistics)
WTO	World Trade Organization