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October 11, 2011

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China

SUMMARY:

We have analyzed the case briefs, and rebuttal briefs, submitted by interested parties in the antidumping duty investigation of multilayered wood flooring from the PRC. As a result of our analysis, we have made changes to the *Preliminary Determination*.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments.

Case Issues:

General Issues

Comment 37: SGUSA's Transportation Expenses
Comment 38: Inland Freight – Warehouse to Customer
Comment 39: Other Revenue for U.S. Inland Freight
Comment 40: Indirect Selling Expense Ratio of Affiliated Reseller
Comment 41: SGUSA's Indirect Selling Expense Ratio

Other Issues

Comment 42: Correction of Lizhong's Name
Comment 43: Whether the Department Should Have Selected Fine Furniture as a Voluntary Respondent

Background:

The Department published its *Preliminary Determination* of sales at LTFV and postponement of the final determination on May 26, 2011. On May 31, 2011, the Samling Group and Vicwood submitted timely ministerial error allegations. The Department published its *Amended Preliminary Determination* of sales at LTFV on June 27, 2011. Following the release of the *Amended Preliminary Determination*, on June 23, 2011, Lizhong filed a submission requesting to correct Lizhong's name as specified in its Separate Rate Application, or at minimum to instruct CBP of the correct name for Lizhong.

Between June 2, 2011 and July 1, 2011, the Department conducted verification of mandatory respondents Yuhua, Layo Wood, and the Samling Group. On July 6, 2011, the Department received a supplemental questionnaire response from Vicwood.

Petitioner, Style Limited, Lizhong, Lumber Liquidators, Home Legend, Armstrong Kunshan, Fine Furniture, Chinafloors, the GOC, Yuhua, Samling Group, and Layo Wood submitted case briefs on August 4, 2011. On August 9, 2011, Petitioner, Style Limited, Lumber Liquidators, Home Legend, Armstrong Kunshan, Fine Furniture, Yuhua, the Samling Group, and Layo Wood filed rebuttal briefs. In addition, on August 15, 2011, respondent Layo Wood resubmitted its August 4, 2011 case brief. The Department conducted a public hearing on August 24, 2011.

List of Abbreviations

Act or Statute	Tariff Act of 1930, as amended
AD	Antidumping
AFA	Facts Available with Adverse inference, or Adverse Facts Available
APKINDO	Indonesian Wood Panel Association
AR	Administrative Review
Arkane International	Arkane International Corporation
Armstrong Kunshan	Armstrong Wood Products (Kunshan) Co., Ltd.
AUV	Average Unit Value
BPI	Business Proprietary Information
CAFC	Court of Appeals for the Federal Circuit

CEA	Central Electric Authority of India
CEP	Constructed Export Price
CFR	Code of Federal Regulations
Chinafloors	Chinafloors Timber (China) Co., Ltd.
CIT or Court	U.S. Court of International Trade
COGS	Cost of Goods Sold
COM	Cost of Manufacture
CPI	Consumer Price Index
CTAP	Confederation of Truckers Association of the Philippines
Customs or CBP	U.S. Customs and Border Protection
CVD	Countervailing Duty
Department	Department of Commerce
EP	Export Price
FA	Facts Available
Fine Furniture	Fine Furniture (Shanghai) Limited
FOH	Factory Overhead
FOP(s)	Factor(s) of Production
FY	Fiscal Year
GNI	Gross National Income
GOC	The Government of the People's Republic of China
GTA	Global Trade Atlas® Online
Home Legend	Home Legend LLC
HDF	High Density Fiberboard
HTS	Harmonized Tariff System
IDM	Issues and Decision Memorandum
ILO	International Labor Organization
IMF	International Monetary Fund
Industrial Plywood	Industrial Plywood Group Corp.
ISIC	International Standard Industrial Classification of All Economic Activities
ITC	U.S. International Trade Commission
ITTO	International Tropical Timber Organization
Layo Wood	Zhejiang Layo Wood Industry Co., Ltd.
Lizhong	Shanghai Lizhong Wood Products Co., Ltd., also known as The Lizhong Wood Industry Limited Company of Shanghai
LTFV	Less Than Fair Value
Lumber Liquidators	Lumber Liquidators Services, LLC
ME	Market Economy
MDF	Medium Density Fiberboard
MLE	Materials, Labor and Energy
NCNT	Non-Coniferous, Non-Tropical

NME	Non-Market Economy
Novawood	Novawood Forest Industries Corporation
NSO	National Statistics Office
NV	Normal Value
Petitioner	The Coalition for American Hardwood Parity
Phil. Softwood	Phil. Softwood Products, Inc.
Philippines Department of Environment and Natural Resources, Forest Management Bureau	FMB
POI	Period of Investigation
PRC	People's Republic of China
PWPA	Philippine Wood Producers Association
RPC*	Riverside Plywood Corporation
SAA	Statement of Administrative Action
SELT*	Samling Elegant Living Trading (Labuan) Limited*
SG&A	Selling, General, and Administrative Expenses
SGUSA*	Samling Global USA, Inc.
SIECA	Secretariat of Economic Integration of Central America
SIECA	Secretariat of Economic Integration of Central America
Smart Plywood	Smart Plywood Industries, Inc.
SRC*	Samling Riverside Co., Ltd.
STF*	Suzhou Times Flooring
SV(s)	Surrogate Value(s)
Swiff Train, et al.	Swiff Train Co., BR Custom Surface, Galleher Inc., DPR International, LLC, Real Wood Floors, Metropolitan Hardwood Floors, Shenyang Haobainian Wood Co., Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd, GTP International, Wood Brokerage International, Bridgewell Resources LLC, and Patriot Timber Products, Inc.
US Floors	U.S. Floors Inc.
VAT	Value Added Tax
Vicmar	Vicmar Development Corporation
Vicwood Industry (Suzhou) Co., Ltd.	Vicwood
WBF or Bedroom Furniture	Wooden Bedroom Furniture
Winlex	Winlex Marketing Corporation
Wood Flooring	Multilayered Wood Flooring
WPI	Wholesale Price Index

WTO	World Trade Organization
Yuhua	Zhejiang Yuhua Timber Co., Ltd.
* Samling Group or Samling	Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan), Samling Global USA, Inc., Samling Riverside Co., Ltd., Suzhou Times Flooring (collectively)

DISCUSSION OF THE ISSUES

General Issues

Comment 1: Financial Ratios

In the *Preliminary Determination*, the Department valued SG&A expenses, and profit using the audited financial statements for FY 2009 from the following companies: Davao Panels Enterprises, Inc., Megaplywood Corporation, Premium Plywood Manufacturing Corporation, and Winlex.[1] All of these companies appear to be Philippine producers of plywood that received no countervailable subsidies and earned a profit before taxes in 2009.[2]

After the *Preliminary Determination*, parties placed new financial statements on the record that the Department has considered below. Petitioner submitted financial statements for the FY 2010 for the following companies: Industrial Plywood; Novawood; Smart Plywood; Vicmar; and Phil. Softwood.[3] The Samling Group and Fine Furniture submitted the financial statements for the FY 2010 for Winlex.[4]

Interested parties have made general arguments on whether the Department should select certain financial statements and how certain expenses should be treated for purposes of calculating the financial ratios. The Department has addressed each argument, in turn.

A. Selection of Surrogate Financial Statements

Petitioner's Arguments

- The financial statements of the five Philippine plywood producers for FY 2010 should be used as the basis for the financial ratios because each producer manufactures comparable merchandise. The financial statements are contemporaneous with the POI, do not contain evidence of subsidies found by the Department to be countervailable, provide sufficient data to calculate factory overhead, SG&A and profit ratios, and each reflects an operating profit in FY 2010.

- The Department should not use the FY 2009 financial statements of Arkane International, Betis Crafts, or Insular Rattan, all producers of WBF, for purposes of calculating

[1] *See Preliminary Determination*.
[2] *Id.*
[3] *See* Petitioner's July 5, 2011 SV Submission at Exhibits FS 4 thru FS 7, respectively.
[4] *See* Samling's July 5, 2011 SV Submission at Exhibit 6 and Fine Furniture's July 5, 2011 SV Submission at Exhibit 1.

surrogate financial ratios because WBF is not comparable to multilayered wood flooring in physical form or use. Moreover, the financial statements of International and Insular Rattan remain illegible and none of the WBF financial statements are contemporaneous with the POI.

- The Department does not and cannot use different financial ratios for different respondents or grouping of respondents. Instead, the Department chooses the most appropriate financial statements overall for purposes of calculating surrogate financial ratios.

- The Department should not use the FY 2010 financial statements of Winlex because it was not a producer of comparable merchandise during the POI and it received interest-free loans from shareholders during FY 2010.

Layo Wood's Arguments

- The Department should use the FY 2009 financial statements of WBF companies Arkane International, Betis Crafts, and Insular Rattan, to calculate simple average surrogate financial ratios. All three of the WBF statements are legible. The Department knows the scope of these companies' manufacturing and sales activity because the Department has routinely and repeatedly used these WBF financial statements in other proceedings.

- Unlike WBF financial statements, the Department has never relied on the plywood producers' financial statements in other cases. Therefore, the Department is not as familiar with these companies' activities. Furthermore, the plywood producers' financial statements are not supported by a website, company brochure, sales quotation, or other document. Further, the mission statements contained in the financial statements' footnotes deserve scrutiny. Phil. Softwood's financial statements are not publicly available.

- Specificity and comparability are of higher priority than contemporaneity in choosing financial statements.

- WBF is more comparable to multilayered wood flooring than plywood. The WBF companies are selling consumer furnishing products ultimately put up for sale to the retail customer like multilayered wood flooring. Conversely, plywood is a construction substrate material and there is no record evidence that the plywood companies make or sell consumer grade paneling with a finish veneer that most closely compares to multilayered wood flooring.

- It would be inappropriate to use the financial statements of Vicmar and Novawood because these companies are involved in logging operations. Layo Wood does not log its own forests but rather purchases wood materials that have been logged or semi-finished by other companies. Furthermore, Vicmar's financial statements are incomplete because a footnote is missing from the record.

- Use of the plywood manufacturers' financial statements would not capture the downstream costs of producing multilayered wood flooring. The production of WBF includes the same inputs and processing steps as multilayered wood flooring. On the contrary, plywood is produced using only wood inputs and involves only the first production step of multilayered wood flooring. Moreover, plywood is an input to multilayered wood flooring. Layo Wood argues that reliance on the plywood financial statements cheats Layo Wood out of including expensive materials (*i.e.*, face veneers) in the denominator of the FOH ratio. Layo Wood also asserts that the financial statements of the plywood producers are aberrational.

The Samling Group's Arguments

- The Department should not use the financial statements of the five plywood producers because they do not reflect the Samling Group's production experience. Vicmar and Phil. Softwood are logging companies; Novawood's principle product line is veneer and record evidence shows that it is also involved in agribusiness; and, Industrial Plywood is engaged in construction. The Samling Group argues that the financial statements of the five plywood producers are aberrational.

- The Department should use the financial statements used in the *Preliminary Determination*, seek additional financial statements, such as the statements submitted by the Samling Group in its post-preliminary surrogate value rebuttal submission, or at least recalculate the financial ratios based on the plywood producers' financial statements by adjusting the categories of certain line items.

Yuhua's Arguments

- WBF companies are the most comparable to Yuhua based on operations and finished product. WBF companies and multilayered wood flooring producers are significant purchasers of plywood, unlike the plywood companies who only produce plywood.

- The five financial statements placed on the record by Petitioner are not representative of the Philippine plywood industry. Novawood is a manufacturer of veneers, not plywood.

- The financial statements of Vicmar and Phil. Softwood cannot be used because both companies are engaged in logging operations and, therefore, operate at higher levels on integration than Yuhua.

- The Department should seek additional financial statements, such as the statements submitted by Yuhua in its post-preliminary surrogate value rebuttal submission.

Department's Position: The Department agrees with Petitioner, in part. The Department used the FY 2010 audited financial statements of Industrial Plywood, Phil. Softwood, and Smart

Plywood to calculate the surrogate financial ratios for the final determination because these companies are producers of comparable merchandise in the primary surrogate country, and the companies' publicly available financial statements are audited, complete, contemporaneous with the POI, and reflect no evidence of subsidies found by the Department to be countervailable.

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors...." In choosing surrogate financial ratios, it is the Department's practice to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[5]

Additionally, pursuant to 19 CFR § 351.408(c)(4), in calculating a respondent's manufacturing overhead, general expenses, and profit, the Department's practice is to use non-proprietary financial statements of companies producing identical or comparable merchandise in the primary surrogate country. Where the Department has reason to believe or suspect that the company producing comparable merchandise may have benefitted from countervailable subsidies, the Department may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that do not contain evidence of subsidization.[6] Consequently, the Department may not rely on financial statements where there is evidence that the company received countervailable subsidies and there is other more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.[7]

In the process of selecting the surrogate financial statements for purposes of calculating the financial ratios, the Department examined the comparability of the merchandise produced by the Philippine manufacturers to the subject merchandise. While the statute does not define "comparable merchandise," in selecting surrogate values for factory overhead, SG&A and profit, the Department has considered whether products have similar production processes, end-uses, and physical characteristics.[8] When evaluating production processes, the Department has taken into account the complexity and duration of the processes and the types of equipment used in production.[9] The CAFC has held that the Department is neither required to "duplicate the exact production experience of the Chinese manufacturers," nor undergo "an item-by-item analysis in calculating factory overhead."[10]

[5] *See, e.g., Diamond Sawblades* (May 22, 2006) and accompanying IDM at Comment 1.
[6] *See, e.g., First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011) and accompanying IDM at Comment 2.
[7] *See Shrimp* (September 12, 2007) and accompanying IDM at Comment 2 citing *Crawfish* (April 17, 2007) and accompanying IDM at Comment 1, where the Department determined that the financial statements of several companies that had received countervailable subsidies did not constitute the best available information to value the surrogate financial ratios and, consequently, did not use them.
[8] *See Chlorinated Isocyanurates* (May 10, 2005) and accompanying IDM at Comment 3.
[9] *See Glycine* (January 31, 2001) and accompanying IDM at Comment 7 and *Beryllium Metal From Kazakhstan* (January 17, 1997) at 2651.
[10] *See Nation Ford* (Fed. Cir. 1999) and *Magnesium Corp.* (Fed. Cir. 1999).

The Department examined Winlex's FY 2010 comparative[11] financial statements and found that footnote 1 accompanying the statements states that the primary purpose of the company is to engage in the business of "selling, trade, marketing, importing & buying chemicals and other related goods."[12] Our examination yielded no evidence of multilayered wood flooring production or wood processing. Because multilayered wood flooring involves the processing of wood and the financial statements of other wood processors are available on the record (*i.e.*, plywood and WBF producers), the Department has rejected Winlex's FY 2010 and FY 2009 financial statements for purposes of calculating the financial ratios. Because we have rejected Winlex's FY 2010 financial statements on the basis that Winlex is not a producer of comparable merchandise to the subject merchandise, Petitioner's argument regarding affiliated loans is moot.

Consistent with the *Preliminary Determination*,[13] the Department has rejected the financial statements of WBF producers Arkane International and Insular Rattan because not all values within the submitted copies are legible. None of the parties to this proceeding placed legible copies of these statements on the record in their surrogate value submissions subsequent to the *Preliminary Determination*.

The Department examined the comparability of the merchandise being produced and contemporaneity of the financial data to determine whether the plywood producers' or the WBF producer's (*i.e.*, Betis Crafts) financial information are the most reasonable surrogates for the respondents to this proceeding. In regard to comparability of merchandise, the Department examined the processes involved in the production of multilayered wood flooring, plywood, and WBF. Multilayered wood flooring production includes such processes as cutting veneers and/or core materials (*e.g.*, plywood, MDF or HDF), assembly and bonding together of the veneers and core layers, pressing of the veneered sheets, cutting, profiling (*e.g.*, tongue and groove locking mechanism), finishing (*e.g.*, distressing, sanding, painting, and coating), and packing.[14] Plywood production involves cutting of veneers, assembly and bonding of veneers and wood sheets, pressing the sheets and/or veneers with glue into multi-layered boards, and cutting or trimming the boards.[15] Face veneers may also be applied for certain types of plywood.[16] The production of WBF includes such processes as part/component design; cutting of wood, veneers, and core materials into patterns or shapes; carving; routing; bonding of the veneers; sanding; assembling of parts/components with glue, nails, or bolts; painting; coating; assembly of hardware; and, packing.[17]

The Department agrees with Layo Wood that the production of WBF employs a larger number of the processes than the production of unfinished plywood, some of which may also be used to produce multilayered wood flooring. However, because many WBF products are more detailed and intricate products than multilayered wood flooring,[18] the level of complexity of these

[11] The FY 2010 financial statements also include the FY 2009 values for comparison purposes.
[12] *See, e.g.*, Fine Furniture's SV submission at Exhibit 1.
[13] *See* Prelim SV Memo at 16.
[14] *See, e.g.*, Layo Wood's April 8, 2011 submission at 7 or the Samling Group's April 14, 2011 submission at 5.
[15] *See e.g.*, Layo Wood's Case Brief, dated August 24, 2011, at 53.
[16] *See* Layo Wood's March 21, 2011 submission at 4.
[17] *See Bedroom Furniture* (USITC 2004) for a discussion of the WBF production processes.
[18] A comparison of the scope definitions of multilayered wood flooring products to WBF products shows that WBF products are more detailed and intricate than multilayered wood flooring products. Multilayered wood flooring, as

additional processes in the production of WBF differs significantly from those necessary to produce multilayered wood flooring. As a result of the differences in the complexity of the processes, the materials, labor, and energy expended to produce WBF also differs significantly from those used to produce multilayered wood flooring. Further, because of the significance in the value added to the WBF products, the profit realized on the sale of WBF products may not be representative of multilayered wood flooring. On the other hand, if the plywood producers primarily produce plywood sheets rather than finished plywood,[19] the financial statements would likely not account for expensive veneers (used in the production of multilayered wood flooring) in the denominator of the financial ratios.

In this case, the Department is not able to ascertain from the plywood producers' financial information the types or models of plywood manufactured by the plywood producers. However, the Department has not rejected the plywood producers' financial statements on this basis because it is the Department's practice to rely on information in the surrogates financial statements and not go behind the financial statement of the surrogate company.[20] We acknowledge that unfinished plywood is an input of multilayered wood flooring and that the Department has in previous cases rejected the financial statements of upstream producers that manufacture inputs of the subject merchandise.[21] As an upstream producer, the materials, labor, and energy expended in the processes of unfinished plywood may not be as great as incurred in the production of multilayered wood flooring. In *Hangers*, the Department rejected the financial statements of upstream producers because financial statements of a producer of more comparable merchandise to the subject merchandise were available on the record. In this case, the only financial statements available on the record are for plywood producers (upstream from multilayered wood flooring[22]) and Betis Crafts, a WBF producer (WBF may be a downstream product of plywood similar to multilayered wood flooring). The Department finds that the most significant process involved in the production of multilayered wood flooring, the bonding of veneers, is captured in the production of plywood. On the other hand, the complexity of the production steps necessary to produce WBF prior to and after the bonding of veneers is so significant in comparison to the manufacture of multilayered wood flooring,[23] that the

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described in the scope of this proceeding, is composed of an assembly of two or more layers or plies of wood veneer(s) in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. WBF in the most recent administrative review (*see Bedroom Furniture* (August 11, 2011) 49730, 49731) as being made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished. Pieces of WBF are typically assemblies of smaller parts such as headboards, foot boards, side rails, canopy posts, cabinets, drawers, doors, shelves, feet, and hardware.

[19] Layo Wood, in its March 21, 2011 submission at 4, states that face veneers may be applied to certain types of plywood products. According to Layo Wood, producers may "put a very thin finish layer on certain models, the using methods and manufacturing finished products that would be very similar as those methods and products within the scope of this investigation."

[20] *See, e.g., Shrimp* (August 19, 2011) and accompanying IDM at Comment 7.

[21] *See, e.g., Hangers* (August 14, 2008) and accompanying IDM at Comment 3.

[22] Upstream plywood producers manufacture unfinished rather than finished plywood.

[23] The complex production processes before the bonding of veneers in the production of WBF include part/component design; cutting of wood, veneers, and core materials into patterns or shapes; carving; and routing. The complex production steps after the bonding of the veneers include assembling of parts/components with glue, nails, or bolts and assembly of hardware. *See Bedroom Furniture* (USITC 2004) for a discussion of the WBF

Department finds that of the plywood and WBF production processes, WBF is less comparable to multilayered wood flooring. [24]

The Department disagrees with Layo Wood's assertion that because multilayered wood flooring and WBF are consumer finishing products put up for retail sale, WBF production is more representative of the production of multilayered wood flooring than is plywood production. We acknowledge that both products may be sold in retail settings; however, the end use of multilayered wood flooring and WBF are in no way similar. Moreover, the end-use of a product does not necessarily determine the inputs used or the production processes employed to manufacture the product

In addition to production processes, the Department examined the physical characteristics of multilayered wood flooring, unfinished plywood, and WBF. Both multilayered wood flooring and plywood are constructed with plies of veneer sheets and are generally cut into sheets or planks.[25] WBF subject to the Department's most recent antidumping duty administrative review is described as being made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished. Pieces of WBF are typically assemblies of smaller parts such as headboards, foot boards, side rails, canopy posts, cabinets, drawers, doors, shelves, feet, and hardware. [26] Because the physical characteristics of WBF are significantly more complex than multilayered wood flooring, the Department finds that the physical characteristics of multilayered wood flooring are more similar to unfinished plywood than to WBF.

The Department also considered whether the financial statements for the plywood and WBF producers available on the record are contemporaneous to the POI. As stated above, FY 2009 and FY 2010 financial statements are available for Philippine plywood producers. The Department has rejected the FY 2009 financial statements used in the *Preliminary Determination* because they are not contemporaneous to the POI and contemporaneous information is on the record of this proceeding (*i.e.*, the FY 2010 financial statements of other Philippine plywood producers). The only available WBF financial statements on the record are for FY 2009, which is not contemporaneous with the POI.

The Department's regulations at 19 CFR § 351.408(c)(4) state that the Department will use non-proprietary financial statements of companies producing identical or comparable merchandise in the primary surrogate country to calculate surrogate financial ratios. As such, the Department's mandate in this case is to select the financial statements of surrogate producers who are most

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production processes. These processes are not used in the production of multilayered wood flooring (*See* Layo's March 21, 2011 submission at 4.

[24] The Department has an established practice of rejecting financial statements of surrogate producers whose production process is not comparable to the respondents' production processes when better information is available (*see e.g., Hot-Rolled Steel* (May 3, 2001) at 2219 and *Persulfates* (February 9, 2005) and accompanying IDM at Comment 1).

[25] *See Preliminary Determination* at 76 FR 30658.

[26] *See Bedroom Furniture* (August 11, 2011) 49730, 49731for the complete scope definition.

representative of the multilayered wood flooring producers, not the surrogate producers who are most representative of the Philippine plywood producers. Therefore, we find the respondents' argument that the plywood producers' financial statements are not representative of the Philippine plywood industry to be off point. Further, we note that the list of plywood producers,[27] which respondents claim is representative of the plywood industry, contains the names of companies that respondents' have also claimed as being manufacturers of products other than plywood.[28]

Based on this analysis, the Department determined that the FY 2010 financial data of the Philippine plywood producers is a more reasonable representation of the multilayered wood flooring producers than the financial data of Betis Crafts, because the plywood production processes are more similar to multilayered wood flooring, and physical characteristics of plywood are more similar to multilayered wood flooring, and the plywood producers' financial data are contemporaneous, whereas the financial data of the WBF producers are not. The Department disagrees with Layo Wood's assertion that the WBF producers' financial statement should be relied upon because the Department is more familiar with that statement than the plywood producers' financial statements. The Department's familiarity with certain surrogate financial statements does not necessarily mean that those financial statements are the best information available on the record of a proceeding. In this case, the Department determined that the plywood producers' financial data are a more reasonable representation than the WBF producer's financial data.

The Department further examined each of the five FY 2010 Philippine plywood producer's financial statements to determine the level of integration (*i.e.*, how closely the plywood producers approximate respondents' production experience).[29] We agree with respondents that the Vicmar financial statements provide data that raise uncertainty in regard to the comparability of Vicmar's level of integration to that of the multilayered wood flooring respondents. Footnote 1 accompanying Vicmar's financial statements states that the purpose of the company is to "engage in logging business for local use and export…to engage in the general cutting, hauling logs, operate sawmills…" (*see* Petitioner's SV submission at Exhibit FS6). Footnote 10 lists "loggings" as a fixed asset (*see id.*). We disagree with Petitioner that the full depreciation of the logging assets is enough evidence to conclude that logging operations are not taking place. The property and equipment discussion in footnote 2 accompanying Vicmar's financial statements specifically states that the company's policy is to "eliminate from the accounts" any costs and associated depreciation related to retired assets. The logging assets referred to by Petitioner appear on Vicmar's balance sheet. According to Vicmar's accounting policy, these assets cannot be assumed to be retired or no longer in use. As a result, logging appears to be an activity that Vicmar currently engages in and, thus, Vicmar appears to operate at a higher level of integration than respondents because record evidence shows that respondents all purchase logs rather than harvest logs.[30] The degree of integration is a relevant factor that can affect overhead rates, as a more integrated producer will have an overhead to raw material input ratio that is higher than the same ratio for non-integrated producers, other things being equal.[31] Therefore, the Department

[27] *See* Yuhua's August 3, 2011 submission at Exhibit 12.
[28] *See e.g.*, Layo's August 3, 2011 submission at 49.
[29] *See Rhodia* (CIT 2002).
[30] *See e.g.*, Layo Wood's August 3, 2011 submission at 49.
[31] *See OCTG* (April 19, 2010) and accompanying IDM at Comment 13.

has rejected Vicmar's FY 2010 financial statements on the grounds that Vicmar's level of integration is not reasonably comparable to those of respondents. Because we have rejected Vicmar's financial statements on the basis that Vicmar's production experience is not reasonably comparable to the multilayered wood flooring producers, Layo Wood's argument that the Department should reject Vicmar's financial statements because they are incomplete is moot.

The Department agrees with Layo Wood and the Samling Group that the Ozamiz City Chamber of Commerce data submitted by Petitioner states that the products and services offered by Novawood is "Agri Business"[32] rather than plywood. Similar documents submitted by Petitioner for Phil. Softwood and Smartwood list the products and services of those companies as "plywood." Furthermore, footnote 10 accompanying Novawood's FY 2010 financial statements[33] lists chainsaws as a distinct and significant category of property, plant, and equipment. The agribusiness reference to Novawood combined with the distinct categorization of equipment used in logging operations, raises uncertainty as to Novawood's level of integration (*i.e.,* whether or not this company is involved in logging). As such, Department has rejected the FY 2010 financial statements for Novawood for purposes of calculating the financial ratios because other, more reasonable information is available on the record of this proceeding. Because the Department has rejected Novawood's FY 2010 financial statements, the Samling Group's and Yuhua's argument that Novawood is a veneer producer rather than a plywood producer is moot.

In regard to Phil. Softwood, the Department disagrees with Yuhua and the Samling Group that the March 23, 2001, press release prepared by the Philippine Department of Labor and Employment and posted on a Philippine government website[34] constitutes evidence that Phil. Softwood is involved in logging operations. The press release discusses efforts made by the Philippine government to assist workers from "wood-based" establishments, to include Phil. Softwood, that were displaced as a result of a log ban implemented under President Aquino. The press release does not define "wood-based" establishments, nor does it refer to Phil. Softwood as a logging company. Moreover, the press release does not refer to a "logging ban" but rather a ban on logs (*i.e.,* a ban on inputs for wood-based establishments) which could mean a ban on purchasing the inputs rather than a ban on producing the inputs (*i.e.,* logging). The Department also disagrees with the Samling Group that the printout from a business search engine website[35] constitutes indisputable evidence that Phil. Softwood is involved in logging operations. Yuhua submitted contrary evidence that shows that Phil. Softwood produces only plywood.[36] As a result, the Department finds the printout from the website submitted by the Samling Group to be inconclusive. Moreover, the Department has examined Phil. Softwood's FY 2010 financial statements and has found no references to logging operations or fixed assets involved in logging operations. The Department disagrees with Layo Wood's conclusion that Phil. Softwood's financial statements are not publicly available because Layo Wood could not locate this company on the Phil Exchange's website. In Exhibit FS7, part B of Petitioner's July 5, 2011, SV submission, Petitioner provided a copy of a printout from the Philippines' Securities and Exchange Commission's website showing an inquiry for Phil. Softwood that reflects Phil.

[32] *See* Petitioner's July 5, 2011 SV Submission at Exhibit FS 4, part C.
[33] *See* Petitioner's July 5, 2011 SV submission at Exhibit FS 4, part B.
[34] *See* Yuhua's August 3, 2011 submission at Exhibit 2.
[35] *See* Samling's August 3, 2011 submission at Exhibit 5.
[36] *See* Yuhua's August 3, 2011 submission at Exhibit 13.

Softwood's SEC registration number. The Department notes that all of the documents submitted by Petitioner from the Philippine SEC refer to the company as "Phil. Softwood Products, Inc.," not "Philippine Softwood Products, Inc." The record evidence shows that Phil. Softwood Products, Inc. is registered with the SEC of the Philippines, and as such, the financial statements of this company are publicly available.

The Department also disagrees with Layo Wood that the Phil. Softwood FY 2010 financial statements are incomplete. The statement of financial position, statement of comprehensive income, and statement of cash flows refer to numbered footnotes 4 through 13. Petitioner's submission of Phil. Softwood's FY 2010 financial statements includes footnotes 1 through 17.[37] Therefore, the Department finds that there is no evidence of missing footnotes. In regard to Layo Wood's claim of missing schedules, the Department finds no references within the financial statements to any schedules that were not included in Petitioner's submission. Thus, the Department has accepted and relied on the FY 2010 financial statements of Phil. Softwood for purposes of calculating the surrogate financial ratios because Phil. Softwood appears to be at the same level of integration as respondents, the financial statements are publicly available, and the financial statements are complete.

The Department disagrees with the Samling Group that the record evidence is conclusive in showing that Industrial Plywood operates at a higher level of integration than respondents. The Samling Group relies on a printout from a business search engine website that lists Industrial Plywood under a category "Business Types Construction Companies."[38] However, immediately following the company's address, the site lists "Plywood." Because this printout is inconclusive, the Department examined Industrial Plywood's financial statements for evidence of construction services. Footnote 1 accompanying Industrial Plywood's financial statements that the company's "primary purpose is to engage in the manufacturing of plywood products." The statement of profit and loss reflects COGS, but no cost of services sold.[39] Further, there is no discussion or evidence of percentage of completion of construction contracts used in accounting for construction projects under International Reporting Standards[40] (*i.e.*, the generally accepted accounting principles followed by Industrial Plywood[41]), within Industrial Plywood's financial statements or the accompanying footnotes. Therefore, the Department finds that no conclusive record evidence exists that Industrial Plywood operates at a higher level of integration than respondents.

The Department disagrees with the Samling Group and Layo Wood that the financial data presented in the FY 2010 audited financial statements of Industrial Plywood, Phil. Softwood, and Smart Plywood are aberrational. As described above, the Department has analyzed the comparability, specificity, contemporaneity, and quality of all the surrogate financial statements placed on the record of this proceeding and has determined, based on that analysis, that the financial statements of Industrial Plywood, Phil. Softwood, and Smart Plywood are the only financial statements available on the record that meet the Department's criteria. We have

[37] *See* Petitioner's July 5, 2011 SV Submission at Exhibit FS 7.
[38] *See* Samling's August 3, 2011 submission at Exhibit 5.
[39] *See* Petitioner's July 5, 2011 SV Submission at Exhibit FS 4.
[40] *See* International Accounting Standard 11.22 (*e.g.*, http://www.iasplus.com/standard/ias11.htm)
[41] *See* footnote 2 accompanying Industrial Plywood's financial statements submitted in Petitioner's July 15, 2011 SV submission at Exhibit FS3.B.

rejected the use of certain financial statements when we have found merit to the parties' arguments. The Department has addressed all of the specific concerns voiced by the parties about Industrial Plywood's, Phil. Softwood's, and Smart Plywood's financial statements. Absent specific record evidence, these financial statements appear to be representative of the financial conditions of Philippine plywood producers. As such, the financial data of Industrial Plywood, Phil. Softwood, and Smart Plywood are the most reasonable representation of the respondents' production experience.

Comment 2: Adjustments to the Petitioner's Surrogate Ratio Calculations

- In general, the Samling Group submits that a recent 332 investigation of the wood flooring industry undertaken by the ITC and Petitioner's own data demonstrate that the four 2009 financial statements relied upon in the *Preliminary Determination* are more reflective of industry norms than the five 2010 financial statements provided by Petitioner. However, should the Department decide to rely on the financial statements placed on the record by Petitioner for the final determination, the Samling Group and Yuhau submit that the following company-specific adjustments should be made to Petitioner's reported surrogate ratio calculations.[42]

- Philippine Softwood

    - The Samling Group argues that "Materials & Supplies" line item is far too significant an amount to be treated as consumables and should be reclassified from overhead expense to raw materials. Further, the Samling Group notes that Petitioner classified "Imported Materials & Supplies" as a raw material, but classified "Materials & Supplies" as an overhead expense, when the financial statements appear to indicate that the two line items are merely a breakout between domestic and imported materials.

    - The Samling Group argues that "Fuel & Oil" should be reclassified from overhead expense to energy since fuel is directly used as a form of energy during the manufacturing process and the Department's practice is to classify fuel as energy.

    - The Samling Group argues that beginning and ending finished goods which have been classified with traded finished goods and incorporated into the denominators for the SG&A and profit calculations should instead be excluded from the calculations in accordance with Department practice.

    - The Samling Group argues that "Taxes & Licenses" should be reclassified from overhead expenses to SG&A in accordance with the Department's settled precedent.

[42] *See* The Samling Group's Case Brief, dated August 9, 2011, at 21-35, and Yuhua's Rebuttal Brief, dated August 9, 2011, at 15.

- Industrial Plywood

    - The Samling Group argues that several inconsistencies between the notes to the 2009 and 2010 financial statements render Industrial Plywood's 2010 financial statements unusable.

    - If Industrial Plywood's 2010 financial statements are relied upon in the final determination, the Samling Group argues that "Gasoline and Diesel" should be reclassified from SG&A to energy in accordance with the Department's practice.

- Smart Plywood

    - The Samling Group argues that "Indirect Materials" is too significant to be treated as consumables and should be reclassified from overhead expense to raw materials.

    - The Samling Group argues that "Fuel & Oil" should be reclassified from overhead expense to energy in accordance with the Department's well-established practice.

    - The Samling Group argues that beginning and ending finished goods which have been classified with traded finished goods and incorporated into the denominators for the SG&A and profit calculations should instead be excluded from the calculations in accordance with Department practice.

- Interested parties also commented on the financial statements of Vicmar and Novawood.

Department's Position: The Department disagrees with the Samling Group's preference for the 2009 plywood producer financial statements as opposed to the contemporaneous 2010 plywood producer financial statements. Such a decision would be contradictory to the Department's well-established practice of basing our selection on the "specificity, contemporaneity, and quality of data" of the surrogate ME country financial statements that are available on the record.[43] Because the POI extends from April 2010 to September 2010, the POI is completely encapsulated within calendar year 2010, which also corresponds with the fiscal years of each of the 2010 plywood producer financial statements. Although several of the 2009 financial statements appear to meet the specificity and quality of data requisites, the 2009 plywood producer financial statements on the record fail to cover any portion of the POI.

Although the Samling Group argues that 2010 financial statements are not reflective of industry norms, especially with regard to overhead expenses, such an analysis is not a criterion of surrogate financial statement selection. In fact, the CAFC has recognized that "the cost for

[43] *See, e.g., Sawblades/China* (*May 22, 2006)* and accompanying IDM at Comment 1.

individual items may depend on the accounting method used by the particular factory. Given these uncertainties, the broad statutory mandate directing the Department to use, 'to the extent possible,' the prices or cost of factors of production in a comparable ME country does not require item-by-item accounting for factory overhead."[44] Lacking company-specific evidence of distortion, the Samling Group's wide-ranging challenge that all five submitted 2010 financial statements reflect overhead ratios that are too high to be representative of the wood flooring industry is unpersuasive and cannot be considered determinative of whether these financial statements can be relied upon as surrogates. Rather, the Department has assessed the submitted financial statements using the standards outlined above and found that the 2010 financial statements for Smart Plywood, Phil. Softwood, and Industrial Plywood provide the best information available on the record for the calculation of the surrogate ratios. For additional discussion of the Department's surrogate financial statements selection process in this case, *see* Comment 1.

Because the 2010 financial statements for Vicmar and Novawood are not being relied upon in the final determination, the Department is only addressing the surrogate financial ratio adjustment comments as they relate to Smart Plywood, Phil. Softwood, and Industrial Plywood. To summarize, these comments include the following:

- the appropriate classification of Indirect Materials and Supplies line items (Phil. Softwood, Smart Plywood);
- the appropriate classification of Fuel and Oil line items (Phil. Softwood, Industrial Plywood, and Smart Plywood);
- the appropriate classification of Taxes and Licenses (Phil. Softwood);
- the appropriate classification of the Change in Finished Goods Inventories (Phil. Softwood, Industrial Plywood, and Smart Plywood); and,
- inconsistencies in the Notes to Industrial Plywood's 2010 and 2009 Financial Statements.

Indirect Materials and Supplies

The Department disagrees with the Samling Group that the line items "Materials & Supplies" for Phil. Softwood and "Indirect Materials" for Smart Plywood should be treated as raw materials in this case. When calculating the surrogate financial ratios, the Department typically examines the surrogate financial statements and categorizes expenses as they relate to material, labor, energy, factory overhead, SG&A and profit.[45] In doing this, it is the Department's practice to treat line items related to indirect materials (*e.g.*, factory supplies, consumables, etc.) as manufacturing overhead unless there is a specific statement in the financial statements as to what costs are

[44] *See Magnesium Corp,of Am.*, 166 F.3d at 1372.
[45] *See, e.g., WBF/China* (*August 17, 2009)* and accompanying IDM at Comment 16.

included in these line items, and those identified costs are accounted for elsewhere in the Department's calculations.[46]

In their respective 2010 financial statements, Phil. Softwood and Smart Plywood categorized both of the line items in question as manufacturing overhead as opposed to raw materials. A review of the notes to the surrogate financial statements provides no further information regarding the specific costs that are included under the "Materials & Supplies" and "Indirect Materials" line items. As emphasized in *WBF/China* (*August 17, 2009)* and accompanying IDM at Comment 16, "it is important to note it is not possible for the Department to dissect the financial statements of a surrogate company as if the surrogate company were an actual interested party, because the Department has no authority to issue questionnaires or verify the information from the surrogate company." Because the Department cannot go behind the line items in the surrogate financial statements, the Department has a longstanding practice to not make adjustments to the financial statement line items, as that may introduce unintended distortions into the data rather than achieving greater accuracy.[47] Absent more detailed information, the Department considers that the classifications reported in the audited financial statements are controlling for purposes of classifying expenses for the surrogate ratio calculations. Because we have 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 line items as overhead in the calculation of the surrogate financial ratios.

This premise also holds true with regard to the Samling Group's argument that Phil. Softwood's "Imported Materials & Supplies" and "Materials & Supplies" line items merely distinguish imported from domestic purchases; hence, both line items should be treated as raw materials. Upon review of Phil. Softwood's notes to its 2010 financial statements, the Department found that raw materials, "Imported Materials & Supplies", direct labor, and manufacturing overhead are all clearly listed as separate line items under COGS.[48] Manufacturing overhead is then further broken out to include several line items, one of which is "Materials & Supplies."[49] The raw material and "Imported Materials & Supplies" line items which were presented as direct materials in the financial statements were also classified as direct materials in Petitioner's submitted surrogate ratio calculations.[50] Likewise, the "Materials & Supplies" line item that Phil. Softwood's financial statements show as a separate line item under manufacturing overhead was treated as manufacturing overhead in the surrogate ratio calculations.[51] As established above, the Department will classify expenses in accordance with the financial statement presentation if further detail is not provided with regard to the expenses included under the line items under consideration.[52] Because no further information is available with regard to the types of materials that are included under the line item, the Department finds it is appropriate to classify Phil. Softwood's "Materials & Supplies" line item as manufacturing overhead.

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[46] *See, e.g., WBF/China* (*August 20, 2008)* and accompanying IDM at Comment 11.
[47] *See WBF/China (August 17, 2009)* and accompanying IDM at Comment 16.
[48] *See* Petitioner's Final SV Submission at Exhibit FS5, Part B.
[49] *Id.*
[50] *See* Petitioner's Final SV Submission at Exhibit FS5, Part A.
[51] *Id.*
[52] *See WBF/China (August 17, 2009)* and accompanying IDM at Comment 16.

Finally, the Department also disagrees with the Samling Group that the relative value of indirect material to MLE line items should be determinative of where the indirect material line items should be classified for purposes of the surrogate ratio calculations. Although the line items are large, neither the respondent nor the Department is able to glean from the surrogate financial statements what specific costs are included under the line items. The Samling Group's claims fail to provide a basis for the Department to exclude costs that may be double-counted without also excluding costs that are not accounted for elsewhere. There is no record evidence as to what a typical overhead rate should be other than to look to the financial statements that pass the criteria used by the Department in selecting surrogate financial statements. As stated above, because the Department cannot go behind line items in the surrogate financial statements, the Department bases its determinations on the information contained within the financial statements themselves.

Fuel & Oil

The Department agrees with the Samling Group in part. While the Department agrees that the line items "Fuel & Oil" (Phil. Softwood and Smart Plywood) should be reclassified from overhead to energy for purposes of calculating the surrogate ratios, the Department does not concur that the "Gasoline & Diesel" (Industrial Plywood) line item should be reclassified from SG&A to energy. "It is the Department's longstanding practice to avoid double-counting costs *where the requisite data are available to do so*."[53] While the companies in the instant case rely on electricity, water, steam, and coal to run their factories,[54] the Department recognizes that there are several energy resources available to companies (*e.g.*, electricity, natural gas, fuel, oil, coal, steam, etc). Because energy is reported as an FOP and because the "Fuel & Oil" line items are broken out in the overhead section of the respective surrogate financial statements,[55] the Department is able to re-classify these line-items as energy, rather than overhead. However, with regard to Industrial Plywood's financial statements, the "Gasoline & Diesel" line item is presented under operating expenses, *i.e.*, SG&A, rather than as manufacturing overhead.[56] Thus, based purely on the classifications provided on the face of Industrial Plywood's financial statements these particular fuel expenses are related to selling and administrative tasks and do not reflect fuel expenses consumed in the company's production activities. Therefore, lacking any further details in the financial statements regarding the company's facilities, production practices, administrative offices, and vehicles, the Department is compelled to classify "Gasoline & Diesel" as an SG&A item consistent with Industrial Plywood's financial statement presentation, rather than as an element of energy covered by the reported factors of production.

Taxes & Licenses

[53] *See WBF/China (August 20, 2008)* and accompanying IDM at Comment 11 (emphasis added).
[54] *See* Layo Wood Verification Report at 55; Yuhua's section D submission dated February 22, 2011, at Exhibit D-7; and, for Samling, *see e.g.*, *BTI Section D Response dated February 28, 2011, Exhibit D-6.*
[55] *See* Petitioner's Final SV Submission at Exhibit FS5, Part B, and Exhibit FS3, Part B.
[56] *See* Petitioner's Final SV Submission at Exhibit FS1, Part B.

The Department agrees with the Samling Group's argument to reclassify Phil. Softwood's "Taxes & Licenses" line item from manufacturing overhead to SG&A. While Phil. Softwood included "Taxes & Licenses" as a line item under manufacturing overhead in its 2010 financial statements, note 14 to the financial statements provides a detailed list of all expenses included under the line item.[57] The significant items include municipal business, land, and building taxes which the Department agrees are more appropriately considered SG&A expenses for purposes of the surrogate ratio calculations.[58] Accordingly, the Department has reclassified Phil. Softwood's "Taxes & Licenses" line item to SG&A for the final determination.

Change in Finished Goods Inventories

The Department disagrees with the Samling Group that the beginning and ending finished goods inventory balances, *i.e.*, the change in finished goods inventory, should be excluded from the surrogate ratio calculations for the final determination.[59] While the Samling Group is correct that the Department has in the past excluded the change in finished goods inventory, there is also precedent where the Department has included the change in finished goods inventory. In *WBF/China* (*August 17, 2009)* and accompanying IDM at Comment 15, the Department recognized the inconsistencies in its practice and expressed a preference going forward for using COGS as the denominator in the SG&A and profit calculations. Because SG&A expenses for a given period are incurred for all products sold during that period, it is more appropriate to use COGS, which reflects the cost of goods that were sold during a period, as opposed to COM, which reflects the cost of goods that were produced during a period. Moreover, that same rationale applies to the calculation of the profit ratio, as the profit realized during a certain period also relates to the sales incurred during that period.[60] Additionally, the Department acknowledged that this decision would align the Department's practice with regard to SG&A and profit calculations in NME proceedings with the calculations performed in ME proceedings.[61] Accordingly, in the instant case, the Department has included the change in finished goods inventory in the denominators of the SG&A and profit surrogate ratios for the final determination.

Notes to Industrial Plywood's 2010 and 2009 Financial Statements

[57] *See* Petitioner's Final SV Submission at Exhibit FS5, Part B.
[58] *Id.*
[59] Essentially, the inclusion of the change in finished goods inventory (the difference in beginning and ending finished goods inventory) alters the SG&A and profit ratios in that the denominators to these calculations reflect COGS, *i.e.*, the cost of goods sold, rather than COM, *i.e.*, the cost of goods manufactured. Specifically, adding the value of finished goods in inventory at the beginning of the period and deducting the value of finished goods in inventory at the end of the period to the cost of goods manufactured during the period results in the cost of goods that were sold during the period.
[60] *See WBF/China (August 17, 2009)* and accompanying IDM at Comment 15.
[61] *Id.*

The Department disagrees with the Samling Group's contention that the inconsistencies in Industrial Plywood's 2009 and 2010 audited financial statements render the 2010 financial statements unreliable and unusable for surrogate ratio calculations. The Samling Group correctly observes that the 2009 comparative data that is provided in note 11 to the 2010 audited financial statements does not line up with the data provided in note 11 of the 2009 audited financial statements.[62] However, it is apparent upon comparing the financial statements for the two fiscal years that the presentation of note 11 changed in 2010, yet the 2009 data were not updated to match the new format used in the 2010 financial statements. For example, lumber costs are presented as the initial line item in the 2010 financial statements, while lumber costs are presented in the second line item in the 2009 financial statements.[63] As a result, when pulling in the 2009 comparative data for the 2010 financial statements, the 2009 lumber costs were inserted as the second line item, a line item that reads log costs in the 2010 format.[64]

While it is undisputable that there are errors in the presentation of the 2009 comparative data, these errors are not present in the 2010 data and therefore do not undermine the integrity of the 2010 data. Additionally, the Department points out that it is only the 2010 figures upon which the auditor is expressing an opinion in the 2010 financial statements.[65] Hence, in the 2010 audited financial statements the 2009 data are provided for comparative purposes only and have no bearing on the validity of the 2010 figures. Based on the foregoing, the Department does not find that the errors discovered in note 11 to Industrial Plywood's 2010 financial statements render the company's information unusable for the purposes of calculating the surrogate ratios. For the final determination, the Department has relied on the 2010 financial statements of Industrial Plywood, Smart Plywood, and Phil. Softwood. *See* Comment 1 above for additional discussions regarding the Department's selection of the surrogate financial statements.

Comment 3: Department's Rejection of Surrogate Value Submissions

- Yuhua states that the Department must make its calculations using the best information available. Yuhua argues that the financial statements submitted by Petitioner in its post-preliminary surrogate value submission are not representative of the Philippine plywood industry, and that, by rejecting additional financial statements submitted by Yuhua and the Samling Group in their surrogate value rebuttal submissions, the Department is now aware that other Philippine plywood industry financial statements are available.[66] Yuhua contends that the Department now has an obligation to seek additional financial statements.[67]

[62] *See* Petitioner's Final SV Submission at Exhibit FSFS3, Part B.
[63] *Id.* and Layo Wood's Rebuttal Surrogate Value Submission dated August 3, 2011, at Exhibit 9.
[64] *Id.*
[65] *See* Petitioner's Final SV Comments, Exhibit FS1, Part B, where Industrial Plywood's auditor states, "In my opinion, the financial statements present fairly, in all material respects, the financial position of INDUSTRIAL PLYWOOD GROUP CORPORATION as of December 31, 2010, and of its financial performance and its cash flow for the year ended in accordance with Philippine Financial Reporting Standards."
[66] *See* SV Rebuttal Rejection Letters.
[67] *See* Yuhua's Case Brief, dated August 4, 2011, at 11-13.

- Layo Wood argues that the Department abused its discretion by rejecting certain factual information submitted by Layo Wood, Yuhua, and the Samling Group.[68] Layo Wood claims that U.S. and international law permit parties to reasonably defend themselves in antidumping proceedings, that parties may comment on information timely submitted, and that parties "may submit factual information to rebut, clarify, or correct factual information submitted by any other party."[69] Layo Wood claims that the Department abused its discretion when it did not allow Layo Wood to rebut Petitioner's new factual information with new factual information of its own in its July 19, 2011, rebuttal surrogate value submission, and when the Department did not update financial statements on the record itself.[70]

- The Samling Group states that it disagrees with the Department's decision to reject the financial statements submitted by the Samling Group and other respondents in their post-preliminary surrogate value rebuttal submissions.[71] The Samling Group argues that the financial statements submitted by the Petitioner are not representative of the plywood industry in the Philippines.[72]

- In rebuttal, Petitioner argues that the Department did not abuse its discretion in rejecting the financial statements submitted by respondents in their post-preliminary surrogate value rebuttal submissions.[73] Petitioner claims that respondents' argument that Petitioner's submitted financial statements are not representative of the industry is not a valid reason to accept untimely new financial statements, and that nothing prevented respondents from submitting their additional financial statements in their post-preliminary surrogate value submissions, rather than in their rebuttals.[74]

Department's Position: The Department finds that it did not abuse its discretion in rejecting the financial statements and other alternative surrogate value information submitted in respondents' rebuttal SV submissions.

The Department disagrees with the respondents' claims that the Department should not have rejected certain parts of their surrogate rebuttal submissions as untimely new factual information.[75] Section 351.301(c)(1) of the Department's regulations provides that an "interested party may submit factual information to rebut, clarify, or correct factual information

[68] *See* SV Rebuttal Rejection Letters.
[69] *See* 19 CFR § 351.301(c)(1).
[70] *See* Layo Wood's Case Brief, dated August 24, 2011, at 55-61.
[71] *See* The Samling Group's Case Brief, dated August 4, 2011, dated August 4, 2011, at 23-24.
[72] *See id.*
[73] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at 35-36.
[74] *See id.*
[75] *See* Yuhua's Case Brief, dated August 4, 2011, at 11-13; Layo Wood's Case Brief, dated August 24, 2011, at 55-61; the Samling Group's Case Brief, dated August 4, 2011, at 23-24.

submitted by any other interested party." The Department noted in its SV Rebuttal Rejection Letters:

> In the *Federal Register* notice announcing the preliminary determination, the Department stated that it generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information under the regulation that allows parties to submit rebuttal factual information (19 CFR § 351.301(c)(l)). Permitting parties to submit wholly new surrogate value information as rebuttal to previously submitted surrogate values after the deadline for surrogate value submissions circumvents the regulation providing that parties have 40 days after publication of the preliminary determination of an antidumping investigation to submit information that could be used to value factors of production (*see* 19 CFR § 351.301(c)(3)(i)). Moreover, submitting wholly new surrogate value information as rebuttal under 19 CFR § 351.301(c)(1) "has the potential to seriously erode the finality of the record necessary for interested parties to make complete assessments of the record for the purposes of the submission of complete briefs ...."[76]

The Department further notes that this policy was not only stated in the *Preliminary Determination* for the present case,[77] but has also regularly been stated in other preliminary determinations published in the *Federal Register*, giving the parties ample notice of the Department's policy regarding acceptance of alternative surrogate value information in parties' rebuttal surrogate value submissions.[78] The parties were also reminded of this policy in the Department's July 14, 2011, letter granting a partial extension of time to submit surrogate value rebuttals.[79]

Layo Wood argues that the Department placed no limitation on the factual information submitted by Petitioner in its July 5, 2011, surrogate value submission, but it abused its discretion in rejecting factual information submitted in Layo Wood's surrogate value rebuttal submission.[80] The Department notes that it did, in fact, also reject certain information from Petitioner's surrogate value submission which could not be used to value FOPs.[81] Regarding the factual information rejected from Layo Wood's surrogate value rebuttal submission, Layo Wood states in its brief that examples of new factual information that it should have been allowed to submit include new tariff numbers and data, new trucking information and maps, and updated financial

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[76] SV Rebuttal Rejection Letters (August 1, 2011)(citing *Multilayered Wood Flooring From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 30656, 30659 at n. 21 (May 26, 2011)); *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying IDM at Comment 2.

[77] *See Preliminary Determination*, 76 FR 30656, 30659 at n. 21 (May 26, 2011).

[78] *See, e.g., Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45729, 45732 at n. 4 (August 6, 2008); *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9593 at n. 3 (March 5, 2009); *Aluminum Extrusions From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403, 69406-7 at n. 20 (November 12, 2010).

[79] *See* SV Rebuttal Extension Letter.

[80] *See* Layo Wood's Case Brief, dated August 24, 2011, at 57.

[81] *See* SV Rejection Letters (August 1, 2011).

statements.[82] While the factual information submitted by Layo Wood in its surrogate value rebuttal submission is undoubtedly different from the factual information submitted by Petitioner in its surrogate value affirmative submission, the offering of a different surrogate value for a FOP does not "rebut, clarify, or correct factual information" submitted by another party, as required by 19 CFR § 351.301(c)(l). The Department finds that the portions of the respondents' rebuttal surrogate value submissions which were rejected by the Department as untimely-filed new factual information should have been submitted in the respondents' surrogate value submissions of July 5, 2011, if the respondents wished for such information to be added to the record of the proceeding and considered for the final determination. In this regard, Layo Wood had the opportunity to put all of this information on the record during its affirmative surrogate value submission and allow all parties to comment on it. Instead, the Department finds that Layo Wood untimely, and impermissibly, submitted new factual information to value FOPs as part of its rebuttal surrogate value submission.

Layo Wood further argues that the Department should have used its discretion to find "good cause" to allow onto the record Layo Wood's new factual information submitted in its rebuttal surrogate value submission, particularly the 2010 financial statements of the companies whose 2009 financial statements were used in the *Preliminary Determination*.[83] Layo Wood claims that Petitioner essentially "refiled" the petition by revising, based upon the surrogate country the Department selected in its *Preliminary Determination*, the information it relied upon in the petition, and that the respondents did not have adequate time to rebut Petitioner's surrogate value submission.[84] However, due to the Department's selection of the Philippines as its surrogate country in the *Preliminary Determination*, all parties were provided adequate notice of the possibility that the Department might continue using the Philippines as the surrogate country in the final determination. As a result, the Department finds it reasonable that Petitioner would submit post-preliminary surrogate values for the Philippines, rather than strictly continue submitting surrogate values only for Indonesia, which was the surrogate country advocated by Petitioner prior to the *Preliminary Determination*. The Department further finds that Layo Wood and the other respondents had sufficient time to rebut Petitioner's surrogate value submission, as all respondents received the 10 days afforded by 19 CFR § 351.301(c)(1) for rebuttal submissions, plus a four-day extension of this deadline.[85]

Layo Wood relies upon the Ironing Tables Memo[86] pertaining to new factual information deadlines that it submitted as an attachment to its resubmitted surrogate value rebuttal submission, which states that the Department accepted the submission of a party's surrogate financial statement as part of a rebuttal surrogate value submission because "the new factual information…may provide the Department with more accurate information" in that administrative review.[87] Layo Wood notes that the Department cited 19 CFR § 351.102(b) in that memo in support of its decision to accept certain information and to extend the time limits to allow for additional party comments on such information. It appears that the Department may have inadvertently cited 19 CFR § 351.102(b) in the Ironing Tables Memo, when it meant to cite

[82] *See* Layo Wood's Case Brief, dated August 24, 2011, at 57.
[83] *See id.* at 58-61.
[84] *See id.*
[85] *See* 19 CFR § 351.301(c)(1); *see also* SV Rebuttal Extension Letter.
[86] *See* Ironing Tables Memo.
[87] *See* Layo Wood SV Rebuttal Resubmission (August 3, 2011), at Exhibit 14.

19 CFR § 351.302(b). Section 351.302(b) of the Department's regulations provides, "{u}nless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part."[88] If the Department did, in fact, intend to reference this section of its regulations, the regulation does not state that the Department *must* accept new factual information which does not "rebut, clarify, or correct factual information" submitted by another party, as required by 19 CFR § 351.301(c)(l), but only that it may extend a time limit if it finds good cause to do so. The Department notes that circumstances which constitute "good cause" to accept a submission in one proceeding may differ from the circumstances in an entirely different proceeding, and that making an allowance to accept a given submission based on the facts in one case does not preclude the Department from rejecting an untimely submission based on the facts in a separate case. In the present investigation, the Department received six timely-filed, fiscal year 2010 financial statements from other parties in their post-preliminary surrogate value submissions,[89] and had a total of 16 financial statements on the record, including those considered in the *Preliminary Determination*.[90] Consequently, the Department found that it already had a large number of financial statements from which to choose, and making an exception for parties to submit additional financial statements after the deadline would not be likely to substantially improve the accuracy of the financial ratio calculations. Moreover, due to the nature of data availability, newer or "more accurate" information becomes available on a rolling basis, and the Department must establish a cut-off point for acceptance of such new information, to enable it to consider the data and fulfill its obligations within the statutory time periods provided.[91] The Department finds that the fact that Layo Wood, Yuhua, and the Samling Group waited to submit their own surrogate financial statements until past the deadline for submitting new factual information to value FOPs does not constitute good cause to extend the filing deadlines and accept the proffered new factual information onto the record.

Furthermore, the Department notes that no party has argued that the reason it waited until its rebuttal surrogate value submission to submit new financial statements was due to the statements being unavailable at the affirmative surrogate value submission deadline. Some of respondents' rejected rebuttal surrogate value exhibits included 2010 financial statements of companies whose 2009 statements were submitted for consideration in the *Preliminary Determination.* The 2009 statements of these companies show that the auditor's reports were dated during March or April of 2010.[92] Presumably, those companies' 2010 financial statements would have become available at a similar time during 2011, making the respondents capable of submitting them by the July 5, 2011, deadline for post-preliminary submission of information to value FOPs.

Two respondents, Yuhua and the Samling Group, argued in their rejected rebuttal surrogate value submissions that their new financial statements were submitted only to show that

[88] *See* 19 CFR § 351.302(b)
[89] *See* Samling Group's Re-filed Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibit 6; Fine Furniture (Shanghai) Limited's Submission of Publicly Available Information to Value Factors, dated July 5, 2011, at Exhibit 1; Petitioner's Re-filed Surrogate Value Submission, dated August 3, 2011, at Exhibits FS1-FS5.
[90] *See id.*; *see also* Surrogate Value Memorandum, dated May 19, 2011, at 15-16.
[91] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying IDM at Comment 2 (further explaining why the Department finds previously absent from the record financial statements submitted in rebuttal improper).
[92] *See* Fine Furniture Surrogate Value Submission, dated March 15, 2011, at Exhibits 10-12; Layo Wood Surrogate Value Submission, dated March 15, 2011, at Exhibit 9.

Petitioner's surrogate financial statements were not representative of the Philippine plywood industry, not to be used to calculate surrogate financial ratios in the final determination.[93] Yuhua's counsel stated during the public hearing, "…we rebutted {Petitioner's financial statements} not by saying use ours, but we were very careful to say we're putting this in as rebuttal to say that {Petitioner's} five {financial statements} are not representative, which is quite different."[94] Despite this argument, Yuhua also attempted to submit, as part of its surrogate value rebuttal, financial ratios that it calculated based on its new financial statements, thereby demonstrating it did, in fact, intend for these financial statements to be considered in calculating surrogate financial ratios.

Even absent the submission of calculated financial ratios, as in the Samling Group's rejected rebuttal surrogate value submission, the Department is still unable to accept a rebuttal surrogate value submission containing previously absent-from-the-record alternative surrogate value information, despite the party's claim that it is intended only as a rebuttal argument rather than a potential surrogate value. In selecting the best information available on the record to value FOPs, the Department must "consider all significant, relevant information on the record" in making its determination.[95] Accordingly, if the Department were to accept a new financial statement solely for the purpose of showing that another financial statement was not representative of the plywood industry, once on the record, it is unclear on what basis the Department could ignore it for purposes of calculating financial ratios.[96]

In addition, the Department disagrees with Yuhua's argument that the Department is obligated to add to the record the additional financial statements from other Philippine plywood manufacturers, because it rejected the statements submitted by the respondents and, therefore, is now aware that those statements exist.[97] While the Department sometimes places surrogate value information on the record, it is not required to do so because it becomes aware that certain information exists.[98] The Department also disagrees with the Samling Group's contention that the Department's rejection of certain information from the respondents' rebuttal surrogate value comments was improper, and that the Department failed to specify the reasons for rejecting the information.[99] In its August 1, 2011, letters to the respondents, the Department identified the information that it was rejecting from each party's submission, and stated that "regardless of the purpose for which they were submitted, certain sections of the July 19, 2011, submission…contain new untimely filed surrogate value information that is not permitted to be filed with other rebuttal information after the deadline for surrogate value submissions."[100] The

[93] *See* Public Hearing Transcript, dated August 24, 2011, at 76-80.
[94] Public Hearing Transcript, dated August 24, 2011, at 78.
[95] *See Taian Ziyang Food Co., Ltd. v. United States*, 637 F. Supp. 2d 1093, 1108 (CIT 2009).
[96] *See* sections 773(c)(1) and 782(e) of the Act,; *Dorbest Ltd. v. United States*, 30 C.I.T. 1671, 1710 (CIT 2006) ("…Congress nonetheless required that if information was available, *i.e.*, placed on the record, Commerce was compelled to consider it.").
[97] *See* Yuhua's Case Brief, dated August 4, 2011, at 11-13.
[98] *See QVD Food Co., Ltd. v. United States*, Slip Op. (CIT Sept. 12, 2011) ("Although Commerce has authority to place documents in the administrative record that it deems relevant, 'the burden of creating an adequate record lies with {interested parties} and not with Commerce." citing *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F.Supp. 1008, 1015 (CIT 1992) and *NTN Bearing Corp. of Am. v. United States*, 997 F.2d 1453, 1458–59 (Fed.Cir.1993)).
[99] *See* The Samling Group's Case Brief, dated August 4, 2011, at footnote 19.
[100] *See* SV Rebuttal Rejection Letters (August 1, 2011).

Department's reason for rejecting the submissions was that they contained surrogate value information submitted after the deadline for submitting such information.

Comment 4: Targeted Dumping

- Petitioner notes that the Department preliminarily found targeted dumping for Layo Wood and the Samling Group but not for Yuhua. Based on modified sales databases after verification, Petitioner argues that for the final determination, the Department should find targeted dumping for all three mandatory respondents.

- The GOC and the Samling Group contend that the Department did not comply with procedural requirements when it withdrew its targeted dumping regulations and, therefore, should revise its targeted dumping calculation for purposes of the final determination in a manner that comports with the withdrawn regulations.

- Layo Wood and the GOC contend that the Department should apply the average-to-transaction method only to the percentage of sales affected by targeted dumping and not the entire U.S. sales database. The Samling Group contends that the Department cannot apply its average-to-transaction methodology (zeroing methodology) to any sales for purposes of the final determination, including those sales found to be targeted.

- Finally, the GOC contends that the Department's actual calculation for targeted dumping is different from what the Department indicated in the headers of the computer output.

Department's Position

The Department, for the final determination, continues to find targeted dumping by Layo Wood and the Samling Group. The Department has not found targeted dumping by Yuhua.

With regard to Yuhua, Petitioner claims that the Department must find targeted dumping based on the prices from Yuhua's resellers to the United States. However, because the Department has not found affiliation between Yuhua and its resellers, the Department continues to use the price between Yuhua and its resellers. Based on those prices, the Department does not find targeted dumping by Yuhua. See comment 21 of this memorandum regarding Yuhua's affiliation.

The Department disagrees with the GOC that we did not comply with the procedural requirements of the Administrative Procedure Act[101] when we withdrew the targeted dumping regulations in December 2008. The Department has fully addressed this issue in *Coated Paper/PRC* (September 27, 2010),[102] where the Department determined that the targeted dumping regulation was withdrawn in a determination separate from the AD duty proceeding and a notice of withdrawal was published in the *Federal Register*.[103] Consistent with U.S.

[101] The APA allows an agency to change regulations after notifying the public, soliciting comments, considering those comments, and publishing final rules at least thirty days before they come into force. *See* 5 U.S.C. § 553.
[102] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.
[103] *Id.*; *Withdrawal of Targeted Dumping Regulations* (December 10, 2008).

Supreme Court precedent, a withdrawn regulation cannot constrain the Department's interpretive authority.[104]

For the Department's targeted dumping calculations, the Act does not mandate a specific test for determining whether targeted dumping occurred. Congress has left the discretion to the Department how to make such a determination. In exercising this discretion, for purposes of the final determination, the Department has used the test introduced in *Nails/PRC* (June 16, 2008),[105] and applied in *Carrier Bags/Taiwan* (March 26, 2010),[106] *Carrier Bags/Indonesia* (April 1, 2010),[107] *OCTG/PRC* (April 19, 2010),[108] and *Coated Paper/PRC* (September 27, 2010).[109] Using this test, as noted above, the Department finds that Layo Wood and the Samling Group engaged in targeted dumping.[110] Based on our analysis, the Department is using the alternative average-to-transaction comparison methodology on all sales of both Layo Wood and the Samling Group to calculate each company's respective dumping margin.

Generally, when calculating dumping margins in an investigation, section 777A(d)(1)(B) of the Act allows the Department to employ the alternative average-to-transaction margin-calculation methodology only if (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and (2) such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodologies.[111] Unless these two criteria are satisfied, the Department is not permitted to use average-to-transaction comparisons to determine dumping margins in an investigation.[112] Thus, unless the criteria are satisfied, in an investigation the Department will use either the standard average-to-average, or the transaction-to-transaction comparison methodology provided in section 777A(d)(1)(A) of the Act.[113] The targeted dumping test in *Nails/PRC* (June 16, 2008) provides a two-stage analysis to determine whether there is a pattern of EPs that differs significantly among purchasers, regions, or periods of time.[114] The first stage addresses the "pattern" requirement; the second stage addresses the "significant difference" requirement.[115] Although the following example applies to customer targeting, the procedures are the same for customer, regional, and time-period targeted-dumping allegations.

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[104] *See United States v. Eurodif S.A.*, 129 S. Ct. at 878, 885-887 and n. 7 (2009) (explaining that the tolling regulation withdrawn by the Department cannot constrain the Department's interpretive authority under *Chevron*).
[105] *See Nails/PRC* (June 16, 2008) and accompanying IDM at Comments 3-6
[106] *See Carrier Bags/Taiwan* (March 26, 2010) and accompanying IDM at Comment 1.
[107] *See Carrier Bags/Indonesia* (April 1, 2010) and accompanying IDM at Comment 1
[108] *See OCTG/PRC* (April 29, 2010) and accompanying IDM at Comment 2.
[109] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.
[110] *See Final Analysis Memorandum for the Samling Group* and also the *Final Analysis Memorandum for Layo Wood*, both dated October 11, 2011.
[111] *See* section 777A(d)(1)(B) of the Act.
[112] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.
[113] *Id*.
[114] *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 IDM at Comments 3-6; *see also Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.
[115] *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 IDM at Comments 3-6; *see also Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.

In the first stage of the targeted dumping test in *Nails/PRC* (June 16, 2008), the "standard-deviation test," the Department determines the share of the alleged targeted-customer's purchases of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price to all customers, targeted and non-targeted.[116] The Department calculates the standard deviation on a product-specific basis (*i.e.*, CONNUM by CONNUM) using the POI-wide weighted-average prices for each alleged targeted customer, and for customers not alleged to have been targeted.[117] If that share exceeds 33 percent of the total volume of a respondent's sales of subject merchandise to the alleged targeted customer, then the pattern requirement has been met and the Department proceeds to the second stage of the test.[118] Layo Wood argues that it is only reasonable for the Department to use the average-to-transaction methodology if the "pattern" exceeds 50 percent of the sales quantity or value. Layo Wood makes no arguments about why the pattern must exceed 50 percent or why the Department's practice of using 33 percent, which has been affirmed by the Court of International Trade, is unreasonable.[119] Therefore, the Department is continuing to apply its practice of using 33 percent as a reasonable threshold for establishing a pattern of activity in its targeted dumping test.[120]

In the second stage of the targeted dumping test in *Nails/PRC* (June 16, 2008), the Department examines all sales of identical merchandise (*i.e.*, by CONNUM) by a respondent to the allegedly targeted customer.[121] From those sales, the Department determines the total volume of sales for which the difference between the weighted-average price of sales to the allegedly targeted customer and the next higher weighted-average price of sales to a non-targeted customer exceeds the average price gap (weighted by sales volume) for the non-targeted group.[122] The Department weights each of the price gaps in the non-targeted group by the combined sales volume associated with the pair of prices to non-targeted customers that make up the price gap.[123] In doing this analysis, the allegedly targeted customers are not included in the non-targeted group; each allegedly targeted customer's average price is compared only to the average prices to non-targeted customers.[124] If the share of the sales that meets this test exceeds 5 percent of the total sales volume of subject merchandise to the allegedly targeted customer, the significant-

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[116] *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 IDM at Comment 3.
[117] *Id.*
[118] *Id.*
[119] *See Mid Continental Nail* at 1377-78 (CIT 2010).
[120] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3; *see also /PRC* (June 16, 2008) and accompanying IDM at Comment 5 (noting that that if the total sales value that met the standard deviation test exceeded 33 percent of the sales value to the alleged target of the identical merchandise, then the first stage of the targeted dumping test, the pattern requirement, was met).
[121] *Id.* at Comment 4.
[122] *Id.* at Comment 6. The next higher price is the weighted-average price to the non-targeted group that is above the weighted-average price to the alleged targeted group. For example, if the weighted-average price to the alleged targeted group is $7.95 and the weighted-average prices to the non-targeted group are $8.30, $8.25, and $7.50, we would calculate the difference between $7.95 and $8.25 because this is the next higher price in the non-targeted group above $7.95 (the average price to the targeted group).
[123] *Id.*
[124] *Id.*

difference requirement is met and the Department determines that customer targeting has occurred.[125] In such a case, the Department will evaluate the extent to which applying the alternative average-to-transaction methodology to all U.S. sales unmasks targeted dumping not accounted for using the standard average-to-average comparison methodology.[126]

Currently, the Department's practice is to utilize the targeted dumping test in *Nails/PRC* (June 16, 2008) to identify targeted dumping and, if targeted dumping is determined, to calculate the AD margin applying the average-to-transaction methodology to all U.S. sales, not just those sales where targeted dumping was determined.[127] The Department disagrees with the GOC, Layo Wood, and the Samling Group's suggestions to modify the Department's current targeted dumping test and: 1) adopt a *de mimimis* rule; 2) only apply the average-to-transaction method to the percent of sales affected by targeted dumping and not the entire U.S. sales database; and 3) not apply the average-to-transaction methodology to any sales, including those sales found to be targeted.

As noted above, the Department has found targeted dumping for the final determination because there was a pattern of prices that differ significantly by customer (*i.e.*, targeted dumping). In doing so, the Department finds that the pattern of price differences identified cannot be taken into account using the standard average-to-average methodology because the average-to-average methodology conceals differences in price patterns between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group.[128] Thus, the Department finds, pursuant to section 777A(d)(1)(B) of the Act, that application of the standard average-to-average comparison methodology would result in the masking of dumping that is unmasked by application of the alternative average-to-transaction comparison method to all of Layo Wood's and the Samling Group's U.S. sales.[129]

Although Layo Wood and the GOC argue that it is unlawful to apply the average-to-transaction calculation methodology to all of a respondent's sales when targeted dumping is determined (and the Samling Group argues that the Department cannot apply its average-to-transaction methodology to any sales for purposes of the final determination, including those sales found to be targeted), in accordance with the Department's decision in *Carrier Bags/Taiwan* (March 26, 2010),[130] the Department determines to apply the alternative average-to-transaction methodology to all of Layo Wood's and the Samling Group's sales on the basis of the Department's examination of the language in section 777A(d)(1)(B) of the Act. The only limitations that section 777A(d)(1)(B) of the Act places on the application of the alternative average-to-transaction methodology are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the alternative average-to-transaction methodology are satisfied,

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[125] *Id*. For example, if non-targeted customer A's weighted-average price is $1.00 with a total sales volume of 100 kg and non-targeted customer B's weighted-average price is $0.95 with a total sales volume of 120 kg, then the difference of $0.05 ($1.00 - $0.95) would be weighted by 220 kg (*i.e.*, 100 kg + 120 kg).

[126] *See Carrier Bags/Taiwan* (March 26, 2010) and accompanying IDM at Comment 1, *Carrier Bags/Indonesia* (April 1, 2010) and accompanying IDM at Comment 1, and *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 2.

[127] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.

[128] *See id.*

[129] *See id.*

[130] *See Carrier Bags/Taiwan* (March 26, 2010) and accompanying IDM at Comment 1.

section 777A(d)(1)(B) of the Act does not limit application of the alternative average-to-transaction methodology to certain transactions. Rather, the provision expressly permits the Department to determine dumping margins by comparing weighted-average NVs to the EP or CEP of individual transactions.[131]

{S}ection 777A(d)(1)(A) of the Act requires the Department to use either average-to-average or transaction-to-transaction comparisons. The Department has established criteria for determining whether average-to-average or transaction-to-transaction is the more appropriate methodology; the Department generally uses average-to-average comparisons except under relatively rare circumstances that make use of the transaction-to-transaction method more appropriate.[132] The Department does not have a practice of using transaction-to-transaction comparisons for certain transactions and average-to-average comparisons for other transactions in calculating the weighted-average dumping margin. Rather, the Department chooses the appropriate comparison method and applies it uniformly for all comparisons of NV and EP (or CEP).

The Department finds that the language of section 777A(d)(1)(B) of the Act does not preclude adopting a similarly uniform application of average-to-transaction comparisons for all transactions when satisfaction of the statutory criteria suggests that application of the average-to-transaction method is the appropriate method.[133] The only limitations the statute places on the application of the average-to-transaction method are the satisfaction of the two criteria set forth in the provision.[134] When the criteria for application of the average-to-transaction method are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the average-to-transaction comparison methodology to certain transactions.[135] Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average NV to the EP (or CEP) of individual transactions.[136] While the Department does not find that the language of section 777A(d)(1)(B) of the Act mandates application of the average-to-transaction method to all sales, it does find that this interpretation is a reasonable one and is more consistent with the Department's approach to selection of the appropriate comparison method under section 777A(d)(1) of the Act more generally. Accordingly, the Department is departing from the practice adopted under the now-withdrawn regulation of applying average-to-transaction comparisons to only a subset of sales. Instead, if the criteria of section 777A(d)(1)(B) of the Act are satisfied, the Department will apply average-to-transaction comparisons for all sales in calculating the weighted-average dumping margin. In addition, the Department determines that establishing a *de minimis* standard would not be appropriate because once the Department finds any instances of targeted dumping, the Department has determined that application of the average-to-transaction methodology is necessary to fully analyze the extent of the dumping that is taking place.

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[131] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.
[132] *See Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007), and the *Matter of Sales at Less Than Fair Value of Certain Softwood Lumber from Canada, Remand Redetermination*, Secretariat File No. USA-CDA-2002-1904-02 (July 11, 2005), at 11.
[133] *See Carrier Bags/Taiwan* (March 26, 2010) and accompanying IDM at Comment 1.
[134] *Id.*
[135] *See* section 77A(d)(1) of the Act.
[136] *Id.*

Accordingly, consistent with the Department's decision in *Carrier Bags/Taiwan* (March 26, 2010),[137] the Department will exercise its interpretive authority without relying upon the withdrawn regulation.[138] Thus, if the criteria of section 777A(d)(1)(B) of the Act are satisfied, as is the case in this investigation for Layo Wood and the Samling Group, the Department will apply the alternative average-to-transaction methodology for all sales in calculating the weighted-average dumping margin.[139]

The GOC contends that, contrary to the statute or substantial evidence, the Department analyzed price averages instead of individual prices and then tested whether the average price of a particular CONNUM to the alleged target was lower than the overall average price of the CONNUM minus one standard deviation.[140] In addition, the GOC argues that the statute only allows for a finding of targeted dumping where there is a pattern of EPs, which it interprets to mean individual prices and not an average of the prices. The Department disagrees with the GOC that the statute suggests that individual prices should be used instead of average prices. The statute states that Commerce may apply its targeted dumping methodology if "there is a pattern of EPs (or CEPs) for comparable merchandise…"[141] The Department is exercising its discretion to interpret EPs as an average of the individual prices to the customer. This is appropriate because the gap test is performed on a weighted-average basis. The Department determines that the relevant price variance is the variance in prices across customers and, therefore, the Department approached this problem by analyzing the variance in the average price paid by each customer.[142]

Also, Layo Wood and the Samling Group contend that the Department has stated that it was appropriate to consider record evidence that might explain patterns of pricing for reasons other than targeting, such as level of trade or circumstances of sale.[143] However, in *Nails/PRC* (June 16, 2008),[144] the Department stated that it *may* be appropriate to examine other factors, such as level of trade or circumstances of sale, not related to targeting that may have an impact on price comparability in a targeted dumping analysis. The Department stated that while the Statute and the regulations provide considerable guidance on comparing U.S. prices to NV for determining dumping, they provide no comparable guidance in comparing different sets of U.S. prices for purposes of determining the existence of targeted dumping.[145] The *SAA* states that "the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be

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[137] *See Carrier Bags/Taiwan* (March 26, 2010) and accompanying IDM at Comment 1.
[138] *See United States v. Eurodif S.A.*, 129 S. Ct. at 878, 885-887 and n. 7 (2009) (explaining that the tolling regulation withdrawn by the Department cannot constrain the Department's interpretive authority under *Chevron*). *Withdrawal of Regulations Governing the Treatment of Subcontractors ("Tolling Operators")*, 73 FR 16517 (March 28, 2008) (providing that for immediate withdrawal of the tolling regulation).
[139] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.
[140] *See* GOC Case Brief at 26.
[141] *See* 19 U.S.C. § 1677f-1(d)(1)(B)(i).
[142] *See Coated Paper/PRC* (September 27, 2010) and accompanying IDM at Comment 3.
[143] *See* The Samling Group's Case Brief, dated August 4, 2011, at 27 and 31 (where the Samling Group argues that the Department should require that the LOT be reported (including customer category and channel of distribution) and the requisite adjustments be made in order to make fair comparisons).
[144] *See Nails/PRC* (June 16, 2008) and accompanying IDM at Comment 2.
[145] *Id.*

significant for one industry or one type of product, but not for another."[146] Thus, while the Department may consider other factors in conducting a targeted dumping analysis, the Statute does not require the Department to consider differences such as level of trade or circumstances of sale in a targeted dumping analysis. In addition and similar to *Nails/PRC* (June 16, 2008),[147] the data that would allow the Department to make a level of trade or circumstance of sale adjustment for Layo Wood or the Samling Group are not on the record even if we considered it appropriate to take these factors into account.

With respect to Layo Wood's argument to consider overruns, Layo Wood did not report these sales as overrun in its response, and provided no information on how a price pattern may be the result of overruns. Consequently, there is no information on the record that would allow the Department to adjust for this factor, even if we determined that it was appropriate to take this factor into account.

With respect to Layo Wood's argument to consider these products were distressed treated and produced using lower grade face veneer, Layo Wood did not contend in its response that this distressed, lower grade face veneer necessarily caused the product's lower price. Layo Wood does not point to record evidence concerning the impact on costs and U.S. prices for producing the wood flooring using lower grade face veneers. Therefore, the Department, without record evidence, is unable to determine its impact on U.S. prices.

Also, the Samling Group contends that the Department should consider brand distinctions as a factor that might drive pricing patterns. The Department already considers differences in the physical characteristics of the merchandise for establishing unique products for purposes of comparison to NV. No party identified product branding as a characteristic necessary for identifying unique products nor do we find any basis on the record to do so now. Moreover, the Samling Group did not provide information in its U.S. sales databases that would allow the Department to determine the effects of branding on price even if the Department considered it appropriate to take this factor into account.[148]

In addition, Layo Wood and the Samling Group argue that the Department should consider differences in sales volume and Layo Wood contends that payment and delivery terms are impacting pricing and should be considered in the Department's targeted dumping analysis. However, the Department is using a net U.S. price, with adjustments for any volume rebates or other sales term adjustments reported by the respondents already taken into account.[149]

The Department also disagrees with Layo Wood's contention that the Department's targeted dumping analysis be based on more specific product codes instead of CONNUMs. The Department's FOPs are reported and verified on a CONNUM-specific basis.[150] Layo Wood and

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[146] *SAA* at 843.
[147] *See Nails/PRC* (June 16, 2008) and accompanying IDM at Comment 2.
[148] *See Nails/PRC* (June 16, 2008) and accompanying IDM at Comment 2.
[149] *See Nails/PRC* (June 16, 2008) and accompanying IDM at Comment 2.
[150] *See* Memorandum regarding: Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China, dated July 22, 2011 at 44 (where the Department stated that Layo Wood's FOP buildup methodology calculated the FOP for a given CONNUM, rather than for each of the product codes within the CONNUM).

the Samling Group, as well as other parties, were given an opportunity to comment on the Department's proposed product characteristics, which are used to compile the CONNUM.[151] The Department has a well-established practice of soliciting interested parties' comments on the creation of CONNUMs as the basis of its dumping analysis. The Department specifically invited all interested parties to provide comments "on meaningful commercial differences among products" [152] as the basis for product comparison criteria. This was an opportunity to provide the Department with information to consider in the creation of CONNUMs, with each unique product assigned a unique CONNUM. However, Layo Wood did not file any comments at that time about what it considers to be "meaningful commercial differences among products," or in how CONNUMs should be created to take into account such commercial differences among products. Because Layo Wood and the Samling Group did not provide any comments on physical characteristics, the Department had to rely on information and comments on the record to compile the CONNUM, including dimension ranges and what physical characteristics to include in the CONNUM. We disagree with respect to Layo Wood's argument that the Department should conduct its analysis using product codes instead of CONNUMs. Internal product codes may be unusable for these purposes. To use one example, product codes could be assigned to a particular customer, whereby the identical product sold to two different customers would never match, with each having a different product code. In addition, Layo Wood has not provided any legal or analytical basis why the Department should conduct the targeted dumping analysis on a different basis than our dumping margin calculations.

The GOC argued that the Department stated in its header that it would compare the average price to the alleged target to the next higher weight-averaged price of sales to a non-targeted customer. However, the GOC contends that, instead, the Department's SAS programming code searched for the lowest weight-averaged price to a non-target customer that had a price gap larger than the average price gap. The Department disagrees with the GOC about its interpretation of the header. The header is as follows: "SMALLEST NON-TARGETED WEIGHT AVERAGED PRICE GREATER THAN ALLEGED TARGETED WEIGHTED AVERAGED PRICE".[153] However, above this header are two title lines which state that this condition only applies for customers, regions, or time periods that pass the price gap, where the alleged targeted price gap is greater than the weight-averaged non-targeted price gap.[154] In addition, the GOC contends that the SAS programming code is incorrect when determining whether a price (by CONNUM/customers) to a non-targeted customer passes the price gap test when compared to the alleged targeted dumping price. The GOC argues that the Department's SAS programming code tests each price for a non-targeted customer (by CONNUM/customers) above the alleged targeted dumping price, and if the difference (measured in weight-averaged price gaps) between any of these weight-averaged non-targeted prices and the alleged targeted dumping price is greater than the weight-averaged non-targeted price gap, the Department determines that this

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As noted by Petitioner, a CONNUM is a control number assigned to each unique product reported in the sales database based on a set of physical characteristics identified in the questionnaire issued to respondents.

[151] *See Initiation Notice*.

[152] *See Initiation Notice*.

[153] *See* Preliminary Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd., dated May 19, 2011 at 231 of Attachment 5 (SAS program output using the average-to-transaction methodology).

[154] *See* Preliminary Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd., dated May 19, 2011 at 231 of Attachment 5 (SAS program output using the average-to-transaction methodology).

price (by CONNUM/customer) passes the price gap test. The Department agrees with the GOC regarding how this aspect of the SAS program conducted the price gap test for the preliminary determination. In addition, consistent with the Department's targeted dumping methodology, the Department agrees with the GOC that the Department's SAS programming code, when conducting the price gap test, should compare the targeted price to the lowest non-targeted price (above the targeted price), by CONNUM/customers, instead of comparing each weight-averaged non-targeted price to the targeted price.[155] For example, if the targeted dumping price is $7.95, and the lowest weight-averaged non-targeted price is $8.25, for the price gap test, the Department would only compare the $7.95 price to the $8.25 price and determine whether the price gap difference between these prices, by CONNUM/customer, is greater than the weight-averaged non-targeted price gap.[156] If the price gap difference is greater than the weight-averaged non-targeted price gap, then the price, by CONNUM/customer, passes the price gap. If the price gap difference is less than the weight-averaged non-targeted price gap, then the price, by CONNUM/customer, does not pass the price gap. If the volume of sales for which the price differences (those prices which pass the gap test) are found to be significant by meeting a 5 percent threshold, then the customer, region, or time period is deemed to have been targeted (*i.e.*, targeted dumping is determined). Therefore, the Department has modified its SAS programming code to run the price gap test by comparing the targeted price with only the lowest non-targeted price (above the targeted price), by CONNUM/customers.

In addition, while examining the GOC's argument, the Department has determined that there is an additional error in the SAS programming code. The weight-averaged non-targeted price gap is currently calculated based on incorrect cumulated non-targeted price gap values. For each additional CONNUM/customer, the non-targeted weight-averaged price gap increases because it is based on an increasing cumulated non-targeted price gap (the sum of non-targeted weight averaged price and all previous non-targeted weight averaged prices for a given CONNUM) that is weighted by volume) and not on a simple non-targeted price gap (that is weighted by volume). Thus, the non-targeted weight-averaged price gap is much higher than it should be. Therefore, the Department has corrected this SAS programming code for the final determination by using a simple price gap (the difference between the previous non-targeted weight averaged price and the non-targeted weight averaged price for a given CONNUM) to calculate a weight averaged gap.

Comment 5: Double Remedy

- The GOC contends that the Department must make adjustments to avoid double counting of duties when both CVD and AD duties are applied simultaneously in investigations for the same product, where NME methodology is applied in the AD investigation, citing *GPX I*, 645 F. Supp. 2d at 1234-35.[157] With no adjustments, the Department's

[155] *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 IDM at Comment 6.

[156] If there were additional prices for this same CONNUM but to other non-targeted customers which are higher than the $8.25 price, such as a price of $8.30, then the Department would not run the price gap test for the $8.30 price, since the Department's targeted dumping methodology is to only conduct the price test gap on the lowest non-targeted price (above the targeted price).

[157] *See GPX Int'l Tire Corp. v. United States*, 645 F. Supp. 2d at 1231, 1234-35 (CIT 2009).

application of both CVD and AD duties to remedy the same alleged unfair trade practices is contrary to law.

- In these investigations, the GOC and the Samling Group argue, there is substantial evidence of double counting. In the CVD investigation, the Department preliminarily determined that the respondents' purchased electricity at less than adequate remuneration, citing *MLWF CVD/PRC* (April 6, 2011),[158] and imposed a CVD duty that equaled the difference between the respondents' actual electricity purchase prices and the rates paid by Chinese producers from a similar user category. Also, in the AD investigation, the Department did not use the respondents' actual purchased electricity cost to derive NV but instead used a surrogate value which was subsidy-free. Because the electricity surrogate value was likely higher than the respondents' actual cost of purchased electricity, the AD duties offset the same allegedly unfair advantage of low-cost electricity.
- LLS/HL/AWP and Yuhua contend that the Department must make adjustments to avoid double counting of duties when both CVD and AD duties are applied simultaneously in NME investigations for the same product, citing *GPX I*, 645 F. Supp. 2d at 1234-35 and *GPX II*, 715 F. Supp. 2d at 1344.[159]
- LLS/HL/AWP and Yuhua contend that concurrent application of the Department's NME AD methodology and CVD law violates the United States' international obligations, specifically Section 19.3 of the WTO's Subsidies Agreement ("SCM"), if no steps are taken to protect against double remedies.[160]
- The Samling Group urges the Department to conform its methodologies to not double count in this concurrent AD investigation based on the *GPX I*, 645 F. Supp. 2d at 1234-35 and *GPX II*, 715 F. Supp. 2d at 1344 court decisions and the findings of the *Appellate Body Report*, WT/DS 379/AB/R at paragraph 605. Also, the Samling Group argues that the application of U.S. AD and CVD laws prohibits the application of double-remedies or double counting, citing *Wheatland*, 495 F.3d at 1358[161]; *U.S. Steel*, 15 F. Supp. 2d at 900, reversed on other grounds, *U.S. Steel Group*, 225 F.3d at 1284-1285[162]; and *Lumber/Canada* (December 12, 2005).[163]
- The Samling Group notes that the Department has stated that the connection between export subsidies and EPs is direct but the connection between domestic subsidies and export subsidies in indirect, citing *Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 2.[164] The Samling Group states that it is wrong to conclude that export subsidies always affect EPs whereas domestic subsidies rarely do. As a matter of law, the statute requires the Department to assess a CVD equal to the full amount of both domestic and export subsidies, citing 19 U.S.C. § 1671(a). Therefore, the statutory framework envisions that in cases involving both CVD and AD, any unfairness will be fully addressed by the CVD. In addition, according to the Samling Group, the United

[158] *See MLWF CVD/PRC* (April 6, 2011).
[159] *See GPX Int'l Tire Corp. v. United States*, 715 F. Supp. 2d at 1337, 1344 (CIT 2010).
[160] *See Appellate Body Report*, WT/DS 379/AB/R at paragraph 605.
[161] *See Wheatland Tube Co. v. United States*, 495 F.3d at 1355, 1358 (CAFC 2007).
[162] *See U.S. Steel Group v. United States*, 15 F. Supp. 2d at 892, 900 (CIT 1998), reversed on other grounds, *U.S. Steel Group v. United States*, 225 F.3d at 1284-1285 (CAFC 2000).
[163] *See Lumber/Canada* (December 12, 2005) and accompanying IDM at Comment 5.
[164] *Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 2.

States General Accounting Office ("GAO") concluded that there is substantial potential for double-counting of domestic subsidies by applying AD NME methodology in concurrent CVD cases.[165]

- Although the Department has stated that there may be subsidies that are not captured by its NME AD methodology, such as when an NME producer receives a subsidy that affects the quantity of factors consumed in production and the benefit of the subsidy is increased output instead of lower costs,[166] the Samling Group contends that this argument is theoretical and inaccurate. The Samling Group contends that because of the Department's NME methodology, any new equipment purchases would result in higher SG&A expenses.
- Petitioner rebuts the arguments by the above parties by noting that *GPX II*, 715 F. Supp. 2d at 1344 is currently on appeal at the CAFC. Therefore, the Department's current position on the application of CVD law to the PRC and the Department's conduct of parallel AD and CVD investigations remains controlling. Petitioner disagrees with arguments by the Samling Group and the GOC that the Department's preliminary calculations of electricity in the concurrent AD and CVD investigations provide a concrete example of double-counting.[167]

Department's Position: The Department disagrees that concurrent application of CVD methodology and AD NME methodology results in a double remedy. While the Act does not expressly address the issue of concurrent application of CVD law and AD NME methodology, section 772(c)(1)(C) of the Act is instructive. Section 772(c)(1)(C) of the Act provides for an adjustment to the AD calculation to offset CVDs based on export subsidies. Section 772(c)(1)(C) of the Act, combined with the absence of any such corresponding adjustment to offset domestic subsidies, strongly suggests that Congress did not intend for any adjustment to offset domestic subsidies.[168]

AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the

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[165] *See* USCESR Commission Testimony.

[166] *See Tires/PRC* (April 25, 2011) and accompanying IDM at Comment 13.

[167] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at 54-55.

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

United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With the exception of section 772(c)(1)(C) of the Act, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

With respect to section 772(c)(1)(C) of the Act, the legislative history of the export subsidy adjustment establishes only that Congress considered it to satisfy the obligations of the United States under Article VI: 5 of the GATT. The legislative history does not suggest specific assumptions about whether foreign government subsidies lower prices in the United States, *i.e.*, contribute to dumping and, in fact, is not solely concerned with the effects of subsidies in the United States.[169] Thus, although the Act requires a full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings, it provides no basis for concluding that Congress's action was based on any specific assumptions about the effect of subsidies upon EPs. It may be simply that Congress recognized the complexity of the issues that would have to be resolved to provide anything less than a complete offset for export subsidies, and simply opted for a full offset to avoid those potential problems. Whether Congress considered the economic assumptions that might have been behind the failure of the GATT contracting parties to address domestic subsidies in Article VI: 5 is not clear. In any event, all that the contracting parties may have assumed was that domestic subsidies had a symmetrical effect upon export and domestic prices. This presumed symmetrical impact may have been a *pro rata* or *de minimis* reduction in these prices. Thus, it is not correct to conclude that Congress assumed that the GATT contracting parties assumed that domestic subsidies lower EPs, *pro rata*, still less that Congress built any assumptions about the price effects of domestic subsidies into the AD law.

The Samling Group and the GOC argue that under the NME methodology, the Department compares the EP, presumably reduced by the domestic subsidies, to a NV that has been calculated using non-subsidized surrogate values. Also, the Samling Group contends that there is a safeguard against double counting inherent in the ME methodology that is missing in the NME methodology, *i.e.*, section 772 of the Act.

The argument that domestic subsidies inflate dumping margins by lowering EPs assumes that domestic subsidies in NME countries do not affect NV. However, while NME subsidies may not affect the factor *values* used to calculate NV in an NME proceeding, such subsidies may easily affect the *quantity* of factors consumed by the NME producer in manufacturing the subject merchandise. For example, a domestic subsidy in an NME country may enable a respondent to purchase more efficient equipment in turn lowering its consumption of labor, raw materials, or energy. When the surrogate values are multiplied by the NME producer's lower factor quantities, they result in lower NVs and, hence, lower dumping margins.[170] Any reduction in factor usage by NME producers would reduce NV in a second manner, because the final factor values are also used to calculate the amounts for SG&A, and profit[171] that are additional components of NV. The Samling Group has argued that this position is theoretical and inaccurate because any new equipment purchases would result in a higher SG&A ratio. The

[169] *See SAA* (1979) at 412.
[170] *See* section 773(c)(3) of the Act.
[171] *See, e.g., Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d at 1277 (CIT 2005) and *Dorbest Limited, et al. v. United States*, 462 F. Supp. 2d at 1300-01 (CIT 2006).

Department disagrees, because applying the NME methodology is a complex calculation that takes into consideration many factors, such as the cost of capital and administrative expenses. Hence, additional equipment purchases do not necessarily result in a higher SG&A ratio as there are other factors which could impact the calculations.

Moreover, in determining NV in NME cases, the Department does not exclusively use factor quantities in the NMEs valued in the surrogate, ME country. Some factors' values are based on the prices of imported inputs (priced in the currency of the country from which the inputs were obtained or in U.S. dollars).[172] Given that the input suppliers in these countries are often competing with PRC suppliers of those same inputs, it is fair to conclude that those prices are influenced by subsidies in the PRC.

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

The Samling Group and the GOC also argue that the AD NME methodology provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is necessarily duplicative.[173] The general premise of the Samling Group and the GOC's argument is that concurrent application of AD ME methodology and CVD law does not create automatic double remedies in ME proceedings because domestic subsidies automatically lower NV, and hence the dumping margins, *pro rata*. The AD NME methodology, on the other hand, produces a NV that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. The Department disagrees.

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

Further, the Act provides that NV in ME cases is to be based on home market prices, where possible. Where NV is based on home market prices, the relationship of subsidies to NV becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs

[172] *See Preliminary Determination* at 30664.
[173] *See* GOC Case Brief at 8-10; and the Samling Group's Case Brief, dated August 4, 2011, at 48-55.

uncertain but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third-country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly.

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

In *Kitchen Racks/PRC* (July 24, 2009) and accompanying IDM at Comment 1[174] and *Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 2,[175] the Department did not deduct domestic CVDs from U.S. prices because this would have resulted in the collection of total AD duties and CVDs that would have exceeded both independent remedies in full. The Federal Circuit has upheld this position.[176] Similarly, the Department's refusal to treat AD duties and safeguard duties as a cost in AD calculations reflects the Department's effort to collect these distinct remedies in full, but no more.

The Department has explained that the effect of domestic subsidies upon EPs depends on many factors (*e.g.*, the supply and demand for the product on the world market, and the exporting countries' share of the world market), and is therefore speculative.[177] Thus, the Department has determined that domestic subsidies do not inevitably reduce EPs, *pro rata*.[178]

In considering the impact of domestic subsidies upon EPs, the form of the subsidy is important because, like export subsidies, some domestic subsidies give domestic producers a greater incentive to increase production than others. A production subsidy (*e.g.*, raw materials at reduced prices) reduces the unit cost of producing that merchandise and, therefore, increases the producer's profit on sales of that merchandise. This may give the producer a commercial incentive to increase production of that merchandise. In an NME, however, it is not necessarily the case that economic decisions are made on the basis of such market forces. In any event, more general subsidies (*e.g.*, general grants or debt forgiveness) would not provide that direct incentive. A foreign producer might use a general subsidy to modernize its plant, pay higher dividends, fund research and development, clean up the environment, make severance payments, increase the production of some other product, or waste the money. Consequently, this type of domestic subsidy will not necessarily result in any increase in production and, therefore, will not necessarily result in any reduction in EPs, still less an automatic *pro rata* reduction.

Even if a producer attempted to respond to a domestic subsidy exclusively by increasing production, it might not be able to do so, at least in the short or medium term. Various constraints (*e.g.*, limits on the supply of raw materials, energy, or transportation) might limit its

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[174] *See Kitchen Racks/PRC* (July 24, 2009) and accompanying IDM at Comment 1.
[175] *See Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 2.
[176] *See Wheatland Tube Co. v. United States*, 495 F.3d at 1358 (CAFC 2007) (reversing *Wheatland Tube v. United States*, 414 F. Supp. 2d at 1271 (CIT 2006)).
[177] *See Tires/PRC* (February 20, 2008).
[178] *See* WTO Report (2006) and Agricultural Policies (1985).

ability to do so. Moreover, capacity expansion is time-consuming. Thus, it would be incorrect to claim that domestic subsidies automatically result in increased production.

Additionally, even if all producers in an NME country do respond to domestic subsidies by increasing production, it is an uncertainty that this increase would result in lower EPs. For example, if world market prices are increasing, it is an unrealistic assumption that an NME producer that receives a domestic subsidy will reduce its EPs by the full amount of the subsidy, as allocated under the Department's CVD methodology. Increased production and exports will tend to lower EPs *over time*, but this reduction will be neither automatic nor necessarily *pro rata*. For example, in previous cases, the ITC has determined that some PRC producers raised their prices in line with world market prices, despite having received substantial subsidies.[179] Increased export sales will reduce the price of the subject merchandise on world markets only to the extent that the producer or producers in question supply a substantial share of the world market, so that the additional production will drive down prices in that market. Even this will take time and will not occur if other producers in the market reduce production to avoid a price war.

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

The Samling Group's reference to *Uranium/France* (August 3, 2004) is misplaced.[180] The Department's statement that, "domestic subsidies presumably lower the price of the subject merchandise in the home and the U.S. markets" does not stand for the firm proposition that domestic subsidies are always passed through into EPs, *pro rata*. This is no more than a presumption, and a very limited one. In *Uranium/France* (August 3, 2004), the Department noted that not all domestic subsidies are presumed to be fully passed through into domestic and EPs, but that the effect of domestic subsidies on the price in each market presumably was the same. For example, the reductions in price could be one percent of the subsidy in each market.

The Department also disagrees with the GOC, Yuhua, and LLS/HL/AWP's characterization of the Department's previous practice with respect to NME countries and, by implication, *Georgetown Steel*, F.2d at 1310.[181] Specifically, it is not the case that the Department determined, in *Georgetown Steel*, F.2d at 1310, not to apply CVD law concurrently with the AD NME methodology because of distortions. In fact, the Department declined to apply the CVD law to the Soviet Bloc countries in the mid-1980s because of the difficulties involved in identifying and measuring subsidies in the context of those command-and-control economies, at that time. In the underlying *Georgetown Steel*, F.2d at 1310 proceedings, the Department

[179] *See Tires/PRC ITC Final Report* (08/2008) and *Circular Welded Carbon-Quality Steel Pipes/PRC ITC Preliminary Report* (07/2007).
[180] *See Uranium/France* (August 3, 2004).
[181] *See Georgetown Steel Corp. v. United States*, 801 F.2d at 1310 (CAFC 1986).

determined that the concept of a subsidy had no meaning in an economy that had no markets and in which activity was controlled according to central plans.[182]

The CAFC noted the broad discretion due the Department in determining what constituted a subsidy, then called a "bounty" or "grant" by the statute, and held that:

> We cannot say that the administrations' conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law, or an abuse of discretion.[183]

As the CAFC stated, even if one were to label these incentives as a subsidy, in the most liberal sense of the term, the governments of these NMEs would in effect be subsidizing themselves.[184] Thus, *Georgetown Steel*, F.2d at 1310 did not hold that the CVD law could never be applied to exports from an NME country. It simply upheld the Department's determination that it could not identify a "bounty or grant" in the conditions of the Soviet Bloc that were before it. Because the Department's prior practice of not applying the CVD law to NME countries was not based on the theory that the NME AD methodology already remedied any domestic subsidies in NME countries, the Department's current practice of applying the CVD law to exports from the PRC remains consistent with our earlier practice.

Also, the GOC, LLS/HL/AWP, the Samling Group, and Yuhua's reliance on *GPX I* and the Samling Group, LLS/HL, AWP, and Yuhua's reliance on *GPX II*, is misplaced. The *GPX II* decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. Even if reliance on *GPX I* and *GPX II* were not misplaced, *GPX I* does not support the positions attributed to it by the parties above. *GPX I* did not find a double remedy necessarily occurs through concurrent application of the CVD law and AD NME methodology. Rather, *GPX I* held that the "potential" for such double counting may exist. The finding of a "potential" for double counting in the *GPX I* decision does not mean that the Department must make an adjustment to its dumping calculations in this AD investigation. The *SAA* places the burden on the respondent to demonstrate the appropriateness of any adjustment that benefits the respondent.[185] In this case, the GOC and the Samling Group's make failed attempts to demonstrate that there is actual double-counting for electricity when the Department preliminarily determined that electricity was provided on a less-than-adequate-remuneration basis in the companion CVD investigation. In the GOC's arguments, it does not provide any actual costs or prices but instead makes general theoretical arguments about the impact of this subsidy. While the Samling Group provided an example, it did not use actual costs or prices but, rather, asserted that the surrogate value for electricity used by the Department was likely higher than the respondents' actual electricity costs. Therefore, no party has provided any evidence

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[182] *Id.*
[183] *Id.* at 1318.
[184] *Id.* at 1316.
[185] *See SAA* at 829; 19 CFR § 351.401(b)(1) ("The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the *amount* and nature *of a particular adjustment.*" (emphasis added)); *Fujitsu*, 88 F.3d at 1034 (explaining that a party seeking an adjustment bears the burden of proving the entitlement to the adjustment).

demonstrating how the CVD the Department found on electricity in the companion CVD case lowered NV in this AD investigation.

Yuhua, LLS/HL/AWP and the Samling Group cite to the *Appellate Body Report* (WTO 2011) as support that the WTO has determined that the application of CVD to the PRC while using NME methodology is contrary to the United States' WTO obligations. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act ("URAA"), Pub L. No. 103-465, 108 Stat. at 4809 (1994).[186] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. *See* 19 U.S.C. § 3538. 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. *See* 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary). 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.[187] For this reason, the *Appellate Body Report* (WTO 2011) does not establish whether the Department's application of AD NME methodology and CVD in concurrent investigations results in double remedies is consistent with U.S. law.

Lastly, contrary to its assertion, the GAO Report study cited by the Samling Group does not create any legitimate doubts about the Department's interpretation of the Act. While, the GAO Report indicates that the Department has decided to not apply CVD law to NME firms and that this decision has been affirmed in *Georgetown Steel*, F.2d at 1310,[188] as an initial matter, we emphasize that the GAO does not administer AD and CVD laws and has no expertise in AD and/or CVD calculations. As explained *supra*, the Department has not determined to abstain from applying CVD law concurrently with the AD NME methodology. More importantly, the GAO did not decisively conclude that double counting occurs when CVD and AD NME methodology is applied. Instead, the GAO Report only states that double counting *may* occur.[189]

Comment 6: Labor Cost

- For the final determination, Petitioner argues that the Department should value labor using the industry-specific surrogate value, as calculated in the Department's Labor Memo, using ILO Chapter 6A data, according to the methodology set forth in the Department's *Federal Register* notice. Petitioner maintains that because the Department attempts to use industry-specific wages from the primary surrogate country that are as

[186] *See Corus Staal BV v. U.S. Dep't of Commerce*, 395 F. 3d at 1347-49 (CAFC 2005), *cert. denied* 126 S. Ct. at 1023, 163 L. Ed. 2d at 853 (Jan. 9, 2006); *accord Corus Staal BV v. U.S.*, 502 F.3d at 1370, 1375 (CAFC 2007); *NSK Ltd. v. United States*, 510 F.3d at 1375 (CAFC 2007); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 22871 (April 25, 2011) and accompanying IDM at Comment 14.

[187] *See* 19 U.S.C. 3533(g); *see, e.g., Antidumping Proceedings* (December 27, 2006). With respect to respondent's argument that the Department's actions are inconsistent with Article 19.3 of the SCM Agreement, the Department disagrees for the reasons discussed above and further notes that a purported inconsistency with the SCM Agreement is not a permitted basis on which to challenge the Department's actions under US law. *See* 19 USC 3512(c)(1).

[188] *See GAO Report* at 8.

[189] *Id*. at 17.

contemporaneous as possible, it should prefer data from 2005 over data from 2002, regardless of its preference for "labor cost" data over "compensation of employees" data.

- Layo Wood, the Samling Group, and Yuhua argue that the Department should value labor using industry-specific "labor cost" data from 2002, reported per hour. Layo Wood, the Samling Group, and Yuhua contend that the Department's methodology states that its preference for type of data is of higher priority than its preference for more contemporaneous data. They argue that the Department should, therefore, use the more preferred "labor cost" data, despite it being less contemporaneous than the "compensation of employees" data.

- Layo Wood and the Samling Group also argue that the 2002 "labor cost" data are more reliable than the 2005 "compensation of employees" data. They claim that two additional "compensation of employees" data sets, which were reported by the ILO in the less preferable "per month" format, would result in hourly labor rates that are more similar to the 2002 "labor cost" than the 2005 "compensation of employees," and that this discrepancy calls into question the overall accuracy of the 2005 "compensation of employees" data that were used by the Department.

Department's Position: For the final determination, the Department calculated a rate based on the method described in *Labor Methodology* and used the "labor cost" data from 2002 in its calculation.

In light of both the Federal Circuit's decision in *Dorbest*, and the CIT's recent decision in *Shandong Rongxin*, the Department finds that relying on multiple countries to calculate the wage rate is no longer the best approach for calculating the labor value.[190] Accordingly, the Department finds that using the data on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME antidumping duty proceedings. It is fully consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation—a single surrogate.

As stated in the Department's published methodology for calculating a surrogate labor rate, the Department begins with ILO Chapter 6A data for the primary surrogate country, and then filters the data using four criteria.[191] To arrive at a single most-preferable data point, the Department applies the filtering criteria in the following order:

1. "Sub-classification," *i.e.*, If there is no industry-specific data available for the surrogate country within the primary data source, *i.e.*, ILO Chapter 6A data, the Department will then look to national data for the surrogate country for calculating the wage rate;
2. "Type of Data," *i.e.*, reported under categories compensation of employees and labor cost. We use labor cost data if available and compensation of employees where labor cost data are not available;

[190] *See Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010); *Shandong Rongxin Import & Export Co., Ltd. v. United States*, Slip Op. 11-45 (April 21, 2011).
[191] *See Labor Methodology* at 36094, n. 10-11.

3. "Contemporaneity," *i.e.*, the Department uses the most recent earnings/wage rate data point available;
4. The unit of time for which the wage is reported. The Department selects from the following categories in the following hierarchy: (1) per hour; (2) per day; (3) per week; or (4) per month. Where data are not available on a per-hour basis, the Department converts that data to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week and 24 working days per month.[192]

No parties commented on the Department's application of the first filtering criteria in its Labor Memo, the selection of an ISIC industry classification. The Department relied upon data reported by the Philippines under ISIC Revision 3.1, Sub-Classification 20, "Manufacture of wood and of products of wood and cork, except furniture."[193] The Department continues to find that this is the most appropriate surrogate category with which to value labor in this case.

The Department disagrees with Petitioner's contention that the four criteria used to select the best labor data should be applied in an order other than that specified in *Labor Methodology*.[194] Petitioner argues that the Department makes every effort to use the most contemporaneous data available, meaning that the Department should use the "compensation of employees" data from 2005, rather than the "labor cost" data from 2002. However, the Department notes that *Labor Methodology* provides for the filtering criteria to be applied in a stated order of preference, with type of data ranked higher than contemporaneity.[195]

In filtering the data based on the second criteria ("type of data"), the Department continues to find that the "labor cost" category is preferred over the "compensation of employees" category.[196] The Department has previously found the compensation of employees series of data to be over-inclusive for the purpose of determining a surrogate labor value.[197] For example, the compensation of employees series of data includes fees to members of boards of directors (which are excluded from labor cost).[198] Because the Department seeks to avoid overstating the respondents' reported labor, it has valued labor for the final determination based on the labor cost data from the most recent year available, which is 2002.

Next, the Department inflated the 2002 data to be contemporaneous with the POI using the relevant CPI as reported in the IMF *International Financial Statistics* under series "64..ZF Consumer Prices."[199] The 2002 labor cost data are reported on a per-hour basis, so no conversion was necessary to reach an hourly labor rate for the final determination. Finally, the Department converted the inflation-adjusted hourly labor cost data, which is denominated in Philippine pesos, to U.S. dollars by applying the daily exchange rate in its SAS programs,

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[192] *See id*.
[193] *See* Labor Memo at 2-3.
[194] *See Labor Methodology* at 36094, n. 11.
[195] *See id*.
[196] *See id*.
[197] *See, e.g., Final Results of Redetermination Pursuant to Remand*, Consol. Court No. 09-00378, Slip Op. 11-16 (CIT 2011), at 53.
[198] *See* Samling Group's Comments on Labor Wage Rate Calculations in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China, dated July 21, 2011, at Exhibit 2.
[199] *See* Labor Memo at 3-4.

consistent with the Department's methodology applied to all other surrogate values denominated in foreign currencies.[200]

Comment 7: Whether to Add Domestic Brokerage and Handling Expenses to Material Inputs That Were Valued Using a Market Economy Purchase Price

- Petitioner argues that the Department should increase the value of certain material inputs where the Department applied a ME purchase price to reflect the value of domestic brokerage and handling expenses incurred by each of the three mandatory respondents.
- Petitioner requests that the Department value domestic brokerage and handling using the cost for importation as published in *Philippine Trading Across Border 2010.*
- The Samling Group, however, argues that such an increase in the value of ME purchases is not warranted because there is no record evidence that the Samling Group incurred domestic brokerage and handling expenses that were not reflected in the ME purchase price reported to the Department.
- No other parties commented on this issue.

Department's Position: The Department has not increased the purchase price of ME purchases to reflect additional brokerage and handling expenses because record evidence does not support such an adjustment. Petitioner does not argue that the Department found evidence that any of the respondents incurred brokerage and handling expenses that were not reported to the Department, and, in fact, the Department found no such evidence during this investigation. In the absence such evidence that a respondent incurred unreported brokerage and handling charges on ME purchases, the Department has no basis to adjust ME purchases to reflect such an expense.[201] Moreover, unlike the Samling Group and Yuhua, the Department has not valued any of Layo Wood's reported inputs using ME purchase prices because, Layo Wood did not purchase inputs from ME suppliers during the POI. For the foregoing reasons, the Department has not added brokerage and handling charges to ME purchases for the final determination.

Comment 8: Brokerage & Handling Adjustments to Account for Letter of Credit Costs

- Layo Wood argues that it does not require an export letter of credit for shipping the subject merchandise and, therefore, the Department should deduct this value from the surrogate value for B&H. Layo Wood asserts that costs associated with letters of credit are included in the *Doing Business in the Philippines* survey, the source for the B&H value the Department used in the *Preliminary Determination.* Because letter of credit costs are not separately detailed in the Department's B&H SV, Layo Wood calculated an estimated letter of credit cost from three publicly available Philippine banks.

[200] *See* Memorandum regarding: Industry-Specific Surrogate Wage Rate: Labor Conversion, dated July 15, 2011.
[201] *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007) and accompanying IDM at Comment 3 (rejecting Petitioner's argument that the price of ME inputs reported on a CFR/CNF or CIF basis should be increased to reflect brokerage and handling expenses).

Department's Position: The Department disagrees with Layo Wood. The Department reviews surrogate value information on a case-by-case basis and, in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[202] The item in the World Bank's *Doing Business in the Philippines* survey to which Layo Wood refers states: "Please assume that the method of payment will be a Letter of Credit (L/C) and that the L/C will specify a method of delivery based on INCOTERMS."[203] There is no indication on the record that the costs associated with procuring a letter of credit are assumed to be borne by the exporter. Costs of letters of credit are usually borne by the purchaser. Further, the survey contains a list of all documents the survey assumes are required for import and export.[204] Letters of credit are not included on this list. Accordingly, we have not deducted letter of credit procurement costs from the surrogate value for B&H.

Comment 9: Certain Information Submitted by Petitioner in Surrogate Value Submission

- Yuhua argues that certain information placed on the record by Petitioner in the August 3, 2011, resubmission of its July 5, 2011, surrogate value submission does not in fact provide surrogate value information, and should, therefore, now be rejected from the record. Yuhua contends that because Petitioner did not argue in its case brief that this particular information should be used to determine surrogate values, the Department should find that it was not in fact properly submitted as new factual information used to value factors of production.

- No other parties commented on this issue.

Department's Position: The Department finds that the information submitted in Petitioner's surrogate value submission, which the Department did not reject, was appropriately included in the record of this investigation.[205]

Yuhua claims that the Department was inconsistent in its decision of what information from Petitioner's surrogate value submission it chose to reject and what information it chose to keep on the record. Yuhua notes that Exhibits 1 through 12 of Petitioner's surrogate value submission include excerpts from the tariff schedules of various countries, including the United States, and Yuhua argues that the Department should now reject these tariff schedules because they do not provide surrogate values.[206] However, the Department notes that the provided tariff schedules, from the Andean Community, India, Jordan, Mercosur, Morocco, Nigeria, SIECA, Thailand, Ukraine, and the United States, provide HTS category numbers and descriptions for various

[202] *See LTP*, 73 FR 57329 (October 2, 2008), and accompanying IDM at Comment 9.
[203] *See* Prelim SV Memo at Exhibit 8, page 18.
[204] *See* Prelim SV Memo at Exhibit 8, page 11; *see also Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 76 FR 9747, (February 22, 2011), and accompanying IDM at Comment 3.
[205] *See* Surrogate Value Rejection Letters from the Department to Jeffrey Levin, Francis Sailer, and Gregory Menegaz, dated August 1, 2011.
[206] *See id.*; *see also* Petitioner's Resubmitted SV Submission, dated August 3, 2011, at Exhibits 2-12.

inputs. In addition, the submitted excerpts from the 2010 World Development Report provide further information about those countries for which HTS schedules were submitted.[207]

Yuhua also argues that Exhibits 13 through 20, Exhibits 29 through 30, and Part C of Exhibits FS3 through FS8 of Petitioner's surrogate value submission should be rejected as not providing surrogate values. The Department notes that Exhibits 13, 14, and 18 include import and/or export statistics of Malaysia, India, Ecuador, El Salvador, Guatemala, Honduras, Nigeria, Sri Lanka, and Morocco for HTS numbers related to certain inputs, which could potentially be used to value FOPs.[208] Exhibits 15, 16, and 19 include U.S. and Philippine import data for HTS numbers relating to certain inputs, as well as information about the unit of measure for one input HTS number.[209] Exhibit 17 contains a 2010 price report of Indiana Forest Products, which includes prices relating to various inputs, and Exhibit 20 contains price quotes for inputs, both of which have the potential to be used to calculate surrogate values.[210]

The Department notes that Exhibits 29 and 30 contain excerpts from a report and a guidebook summary regarding loans and incentives in the Malaysian timber industry, which has the potential to be used to determine whether certain surrogate value information is usable.[211] Part C of Exhibits FS3 through FS8 provides additional information about the companies whose financial statements were submitted for purposes of calculating surrogate financial ratios.[212]

Pursuant to 19 CFR § 351.301(c)(3), in an antidumping investigation, parties have 40 days following the publication of the preliminary determination to submit "publicly available information to value factors under §351.408(c)." The Department continues to find that this information was publicly available and had the potential to be used to value FOPs, regardless of whether Petitioner actually argued for its use as a surrogate value in its case brief, or whether the Department chose to use the data to calculate surrogate values.

Comment 10: Appropriateness of Countries Within a "GNI band" as Surrogate Value Sources

- Petitioner provided a list of 17 countries with GNIs between the highest and lowest GNIs of countries on the surrogate country list; Petitioner provided excerpts from various HTS schedules as evidence that such countries produce the subject merchandise.

Department's Position:

In accordance with 773(c)(4) of the Act, in non-ME cases, the Department considers a number of countries that are economically comparable to the NME in question, and are significant producers of comparable merchandise. The Department then "designates one country as the primary surrogate in a memo to the file, which explains how that country satisfies the statutory selection criteria."[213] Further, the Department's regulations state that, normally, the Department

[207] *See* Petitioner's Resubmitted SV Submission, dated August 3, 2011, at Exhibit 1.
[208] *See* Petitioner's Resubmitted SV Submission, dated August 3, 2011, at Exhibits 13, 14, 18.
[209] *See id.* at Exhibits 15, 16, 19.
[210] *See id.* at Exhibits 17, 20.
[211] *See id.* at Exhibits 29-30.
[212] *See id*. at Part C of Exhibits FS3-FS8.
[213] *See Policy Bulletin 04.1*.

will value all factors of production from a single surrogate country.[214] On February 18, 2011, the Department issued to parties a memo requesting comments on a list of potential surrogate countries (*i.e.*, India, Indonesia, the Philippines, Ukraine, Thailand, and Peru) determined to be at a level of economic development comparable to the People's Republic of China.[215] On May 19, 2011, the Department placed on the record a memorandum explaining the Department's selection of the Philippines as the primary surrogate country in the proceeding.[216] Accordingly, for the purposes of this final determination and as stated throughout the proceeding, the Department will first look to the Philippines as a source for surrogate values to value factors of production. In the event of a lack of data on the record or other extenuating circumstances, the Department may draw data from other surrogate countries, as needed, including countries not specifically named in the memorandum issued by the Office of Policy that meet the criteria in Policy Bulletin 04.1, though with a stated preference for those on the list distributed to parties on February 18, 2011.[217] However, in the instant investigation we were able to find reliable surrogate values from the Philippines, the primary surrogate country, and it was not necessary to use surrogate values from the other countries on the list submitted by Petitioner. Thus, pursuant to 19 CFR § 351.408(c)(2), the Department will normally value all factors of production using a single surrogate country.

Comment 11: Separate-Rate Margin

- Lumber Liquidators *et al*., Lizhong, Fine Furniture, and China Floors argue that the Department should not have included the AFA rate assigned to the PRC-wide entity in its calculation of the rate assigned to separate rate respondents. These parties argue that the simple-averaging of the zero and *de minimis* margins calculated for the mandatory companies together with the AFA rate assigned to the PRC-wide entity is an unreasonable methodology that is inconsistent with congressional intent, judicial precedent, and Department practice.

- Petitioner argues that the Department's decision to average the rates of the mandatory respondents with the rate assigned to the PRC-wide entity is reasonable, and that this methodology should be applied in the final determination if the mandatory respondents continue to receive zero or *de minimis* rates.

Department's Position: The Department has not addressed interested parties' comments regarding the methodology used to calculate the rate assigned to separate rate respondents in the *Preliminary Determination* because it has not used this methodology in the final determination. For the final determination, the Department has calculated dumping margins for two of the mandatory respondents that are above *de minimis*. Thus, it is no longer necessary to incorporate the rate assigned to the PRC-wide entity in the calculation of the rate assigned to separate rate applicants.

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[214] *See* 19 CFR § 351.408(c)(2).
[215] *See* Letter to All Interested Parties re: Investigation of Multilayered Wood Flooring from the People's Republic of China, dated February 18, 2011.
[216] *See* Memorandum to the File through Abdelali Elouaradia, regarding: Selection of a Surrogate Country, dated May 19, 2011.
[217] *See* Letter from the Department to Interested Parties re: Investigation of Multilayered Wood Flooring from the People's Republic of China, dated February 18, 2011, at Attachment 1.

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Consequently, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and *de minimis* rates and rates based entirely on adverse facts available, and applies that resulting weighted-average margin to non-selected cooperative separate-rate respondents.[218] Notwithstanding this practice, we have not calculated the rate for the separate rates respondents by weight-averaging the rates of Layo Wood and the Samling Group, because doing so risks disclosure of proprietary information. Specifically, because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average margin to ensure that the total import quantity and value for each company is not inadvertently revealed.[219]

Comment 12: Scope Related Issues

Background

On May 19, 2011, the Department released the Scope Memo concurrently with the *Preliminary Determination*. In this memorandum, the Department established its position on: 1) whether to modify the scope language by removing the term "plywood flooring;" 2) whether to clarify the scope language regarding the second group of HTSUS subheadings; and 3) whether to exclude any of the following from the scope of the investigations: a) Asian Birch or Acacia; b) products consisting of seven plies or more; c) products containing high-density fiberboard or oriented strand board; d) products with a natural or ultra-violet oil top surface coatings; e) sawn and sliced peeled products; f) "softwood" flooring; or g) "unfinished" flooring.[220]

Concomitantly with the Scope Memo, we stated in the *Preliminary Determination* that:

> CBP has indicated to the Department that imports of subject merchandise entering under HTSUS subheadings 4409.10.0500; 4409.10.2000; 4409.29.0515; 4409.29.0525; 4409.29.0535; 4409.29.0545; 4409.29.0555; 4409.29.0565; 4409.29.2530; 4409.29.2550; 4409.29.2560; 4418.71.1000; 4418.79.0000; and 4418.90.4605 would be *incorrectly classified*. Therefore we invite comment on whether those HTSUS subheadings should be eliminated from the scope description. These comments may be submitted to the

[218] *See, e.g., 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 (February 13, 2008) unchanged in *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).

[219] *See Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 75 FR 38980 (July 2010) and accompanying IDM at Comment 4.

[220] *See* Scope Memo.

Department no later than 20 days after the date of publication of this notice, and rebuttal comments no later than five days later.[221]

Subsequent to this, the Department received comments on the scope of the investigations from US Floors, a domestic importer of plywood veneer;[222] Swiff Train, *et al.*, domestic importers of plywood veneer;[223] Richmond, a domestic importer of plywood veneer;[224] Style Limited, a Chinese producer of strand-woven lignocellulosic flooring;[225] Petitioner;[226] and Lumber Liquidators, *et al.*, domestic importers and a Chinese producer of subject merchandise.[227] Each of the comments is addressed individually below.

Comment 12.A: Exclusion Request for Plywood Panels or Veneer

- US Floors argues that plywood panels are a separate and distinct product from multilayered wood flooring. In particular, US Floors asserts that plywood sheets are used in a number of applications, such as cabinetry, furniture, retailer building, and the recreational vehicle industry, while multilayered wood flooring is used solely as flooring.[228]

- US Floors states that while the scope language is "clear that it only applies to multilayered wood flooring" and that "{p}lywood panels are not included within the scope of the investigation," clarification is necessary to prevent confusion on the part of CBP at importation. This is because hardwood plywood and certain types of wood flooring are both classified under HTS subheading 4412. US Floors acknowledges that the written language of the scope controls but argues that CBP often refers to HTS numbers to determine whether a product is subject to an AD order, and that CBP requests for importer samples of products may create delays for importers in receiving their goods. Therefore, US Floors asks the Department to clarify that plywood panels are not covered in order to prevent "unnecessary delays and confusion," as these potential delays could

[221] *See Preliminary Determination* at 30667 (emphasis added).
[222] *See* Letter from U.S. Floors, Inc. to the Department "Re: Multilayered Flooring From the People's Republic of China: Request to Clarify Scope," (May 19, 2010) {*sic*}.
[223] *See* Letter from Swiff Train Co., BR Custom Surface, Galleher Inc., DPR International, LLC, Real Wood Floors, Metropolitan Hardwood Floors, Shenyang Haobainian Wood Co., Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd, GTP International, Wood Brokerage International, Bridgewell Resources, and Patriot Timber Products to the Department "Re: Scope Comments – Multilayered Wood Flooring from the People's Republic of China," (June 6, 2011). Hereafter, these submitters are referred to as "Swiff Train, *et al*."
[224] *See* Letter from Richmond International Forest Products to the Department "Re: Response to Request for Comments With Respect To Scope of Antidumping And Countervailing Duty Investigation Of Multilayered Wood Flooring From The People's Republic of China (A-570-970/C-570-971)," (June 13, 2011).
[225] *See* Style Limited's June 15 Scope Comments *see also* Style Limited's Case Brief; and Style Limited's Rebuttal Brief.
[226] *See* Letter from Petitioner to the Department "Re: Multilayered Wood Flooring from the People's Republic of China," (June 15, 2011); *see also* Letter from Petitioner to the Department "Re: Multilayered Wood Flooring from the People's Republic of China," (August 3, 2011).
[227] *See* Letter from Lumber Liquidators Services, LLC, Home Legend, LLC, and Armstrong Wood Products (Kunshan) Co., Ltd. to the Department "Multilayered Wood Flooring from China – Case Brief of Lumber Liquidators Services, LLC, Home Legend, LLC, and Armstrong Wood Products (Kunshan) Co., Ltd." (August 9, 2011), submitted in the AD investigation of wood flooring from the PRC (A-570-970) and placed on the record of this investigation. Hereafter, these submitters are referred to as "Lumber Liquidators, *et al*."
[228] *See ITC Section 332 Report*.

"negatively impact US Floors'…operations."

- Swiff Train, *et al*., submit three nearly identical letters from Wood Brokerage International, Bridgewell Resources LLC, and Patriot Timber Products, Inc., expressing their concern that the scope of these investigations covers products that use plywood veneer for purposes other than wood flooring. Swiff Train, *et al*., assert that if they were to rewrite the scope description, removing the word "flooring," it would describe plywood veneer used for any application. Swiff Train, *et al*., state their concern that Petitioner has expanded the scope to cover products that are not produced by Petitioner, and that the U.S. plywood industry did not file or participate in these investigations. Swiff Train, *et al*., conclude by requesting the Department to clarify whether plywood veneer imports are covered by the scope of these investigations.

- Richmond states that it imports plywood veneer products that are used in a broad range of non-flooring applications, such as cabinetry and furniture, but which fit the physical characteristics of subject merchandise set forth in the scope. Richmond alleges that the scope is "extraordinarily" broad in that it identifies physical characteristics basic to all plywood veneer panel products regardless of their use, rather than characteristics that distinguish plywood flooring and, therefore, encompasses plywood veneer products used for non-flooring applications. Furthermore, Richmond states that beyond the end use of the plywood panels it imports, there is no identifiable physical basis in the scope language for distinguishing the plywood veneer products it imports, and that as such, this "overly inclusive and end-use based approach" runs counter to the Department's stated policy and procedural goals.

- Richmond argues that the Department's *Antidumping Manual* states that "{t}he focus of the scope should be on the physical characteristics of the merchandise, rather than the end use of the merchandise,"[229] and that one procedural aim of an investigation is to ensure that the scope is accurate and narrowly focused. Richmond further argues that the *Antidumping Manual* guides the Department to define the scope of an investigation as accurately as possible to ensure that products in which the affected industry has no interest are removed or not included. To reinforce this point, Richmond cites *Cellular Mobile Telephones* in stating that the Department has the "inherent power to establish the parameters of the investigation" and that:

- {w}ithout this inherent authority, the Department would be tied to an initial scope definition that is based on whatever information the petitioner may have had available at the time of initiating the case, and which may not make sense in light of the information available to the Department or subsequently obtained in the investigation.[230]

- In this regard, Richmond states that the Department's inherent authority to define the scope of an investigation has been confirmed by the CIT in *Diversified Products* and *Wheatland Tube*.[231]

[229] *See 2009 Antidumping Manual*, Chapter 2 at 12.
[230] *See Cellular Mobile Telephones*.
[231] *See Diversified Products* at 883, 887, and *Wheatland Tube* at 149, 155.

- Due to the nature of the scope language as currently constructed, Richmond argues that there is no basis on which to fashion an order that is administrable. Richmond further argues that due to CBP's designation of enforcement of AD and CVD orders as a "Priority Trade Issue," the issue of administrability of the scope becomes exacerbated because there is no basis for an import specialist to determine, based on the condition of plywood panels at importation, whether entries of plywood panels that fit the physical description of the scope language should enter as Type 1 (*i.e.*, duty-free entries) or Type 3 (*i.e.*, entries subject to an order). Richmond states that this situation becomes more complex due to the number of HTSUS subheadings within the scope that cover both flooring and non-flooring plywood panels, and by the inclusion of HTSUS subheadings that do not apply to subject merchandise, as CBP noted in its comments.[232]

- Richmond states that importers of non-flooring plywood panels will face multiple CBP-related issues due to the scope as currently constructed, and submits that the Department should seek a subheading provision through the Section 484(f) Committee to apply a suffix within the tariff schedule stating "for use solely or principally as flooring." Richmond concludes by stating that amended subheadings in the tariff schedule would allow for more clear enforcement and would benefit all parties involved.

- Petitioner states that it does not have a fundamental issue with the requests of US Floors, Swiff Train, *et al*., or Richmond, and confirms that panels and veneers are not included in the current scope definition. However, Petitioner asserts its concern that any imported flooring product that meets the definition of subject merchandise would be termed "plywood panel" or "plywood veneer" as a mechanism to circumvent any orders or deposit requirements that may result from these investigations.

Department's Position: The Department has not excluded plywood panels and/or veneers because the requests made by US Floors, Swiff Train, *et al*., and Richmond are based on end-use arguments. In *Off-The-Road Tires from the PRC*, the Department stated that,

> {a} scope based upon end-use application…raises administrative problems for the Department. In certain instances the actual end-use of merchandise may be unknown to the producers or exporters investigated by the Department. Any certifications or assertions made by the exporter/producer about the end-use of particular sales would be difficult, if not impossible, to verify. As a result, the Department's analysis would depend on a generally unverifiable supposition about the end-use of individual sales, and would be subject to manipulation.[233]

Lacking a physical characteristic or characteristics that would serve to identify the products of concern to US Floors, Swiff Train, *et al*., and Richmond, we are not able to clarify the scope to include the end-use language as requested. Regarding Richmond's comment about the inclusion of HTSUS numbers that do not cover subject merchandise, we have removed these from the scope description. *See* Comment 12.C "Scope Language Regarding HTSUS Subheadings"

[232] *See* Scope Memo at 4 and Attachment 2.
[233] *See Off-The-Road Tires from the PRC* and accompanying IDM at 192.

below.

Comment 12.B: Strand-Woven Lignocellulosic Flooring

- Style Limited requests an exclusion for strand-woven lignocellulosic flooring, known commercially as ReStyle.™ Style Limited states that while its product is a type of engineered flooring with a plywood core, the product does not utilize a wood face veneer but rather a top layer cut from a block of material produced using strand-woven technology.[234] Style Limited states that this patented technology can transform any type of wood into a high density product with three times the hardness of oak, while thinner than solid hardwood flooring.

- Style Limited requests that the Department exclude its flooring from the scope because the domestic multilayered wood flooring industry does not produce, nor does it have the capability to produce, strand-woven lignocellulosic flooring (*i.e.*, it has a completely different production process using specialized pressing equipment).

- Style Limited asserts that the existence of two U.S. patents and a U.S. trademark demonstrates that its strand-woven lignocellulosic flooring is a unique item that is not produced in the United States by Petitioner, and, as such, should be excluded from the scope. As further evidence of this, Style Limited cites *Certain Lined Paper* and *Cased Pencils PRC* as evidence that the Department has excluded patented products before.[235] Finally, Style Limited argues that due to Petitioner's lack of an objection to an exclusion for strand-woven lignocellulosic flooring, the Department should insert exclusion language in the scope description.

Department's Position: We find that an exclusion for strand-woven lignocellulosic flooring is not warranted because, by its very definition, strand-woven lignocellulosic flooring is not subject merchandise. Section 771(25) of the Act states that "{t}he term 'subject merchandise' means the class or kind of merchandise that is within the scope of an investigation…"[236] The scope of this investigation states that "{m}ultilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[237]..."[238] According to Style Limited, "{u}nlike the subject merchandise…the product does not utilize a wood face veneer"[239] and "strand-woven lignocellulosic flooring does not utilize a face veneer as defined by the scope of this investigation."[240] As such, an exclusion for strand-woven lignocellulosic flooring is not necessary because it is not subject merchandise.

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[234] Style Limited states that it uses "wood as a base material, then partially opens the lignocellulose structure of the wood, removes a portion of the natural chemical elements, introduces new materials, compresses the material and chemical compound together, then heat activates it to create a monolithic block that is stronger that the original material."
[235] *See Certain Lined Paper* at 56949, 56950; *see also Cased Pencils PRC* at 12323, 12324.
[236] *See* Section 1677 of the Act.
[237] A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.
[238] *See Preliminary Determination*.
[239] *See* Style Limited's Case Brief at 2.
[240] *Id.* at 6.

Comment 12.C: Scope Language Regarding HTSUS Subheadings

- In the Scope Memo, the Department noted that CBP submitted comments on the scope of the investigations recommending that the following scope language should be clarified:

    - "In addition, imports of subject merchandise may enter the U.S. under the following HTSUS subheadings: 4409.10.0500; 4409.10.2000; 4409.29.0515; 4409.29.0525; 4409.29.0535; 4409.29.0545; 4409.29.0555; 4409.29.0565; 4409.29.2530; 4409.29.2550; 4409.29.2560; 4418.71.1000; 4418.79.0000; and 4418.90.4605."

- Specifically, CBP recommended changing the scope language to state that "imports of subject merchandise may enter the U.S. *incorrectly classified* under the following HTSUS subheadings…"[241] CBP stated that without the phrase "incorrectly classified," it would appear that the second group of classifications is somehow correct, and that this case is not intended to capture goods correctly classified under those HTSUS numbers.

- Petitioner asserts that it agrees with CBP's recommendation. Petitioner states that it strikes a correct balance between recognizing that the specific subheadings should not include subject merchandise, while also recognizing that misclassifications are common with respect to this group of imports.

Department's Position: As CBP has stated, subject merchandise entering under this group of HTSUS subheadings would be incorrectly classified (*i.e.*, these subheadings inherently do not include subject merchandise). While we acknowledge Petitioner's concern over potential misclassifications, we disagree that these HTSUS numbers should be included in the description of the scope of these investigations. As noted above, section 771(25) of the Act states that "{t}he term 'subject merchandise' means the class or kind of merchandise that is within the scope of an investigation…"[242] Therefore, in accordance with section 771(25) of the Act, the Department has removed the HTSUS subheadings that do not include subject merchandise for this and the AD final determination.

Comment 12.D: Continued Requests for Certain Exclusions

- Lumber Liquidators, *et al*., reiterate their exclusion requests as argued in their November 30, 2010,[243] and April 13, 2011,[244] submissions, stating that the Department must exclude certain products from the scope of the investigations because they are either not manufactured by the domestic industry, or are not finished (*i.e.*, "unfinished") wood

[241] *See* Scope Memo at Attachment 2.
[242] *See* section 771(25) of the Act.
[243] *See* Letter from Lumber Liquidators Services, LLC; Home Legend, LLC; US Floors, Inc.; and Metropolitan Hardwood Floors, Inc. to the Department, "Multilayered Wood Flooring from China—Comments on the Scope of the Investigation," November 30, 2010.
[244] *See* Letter from Lumber Liquidators Services, LLC and Home Legend, LLC to the Department, "Multilayered Wood Flooring from China—Rebuttal Comments on Scope of the Investigation," April 13, 2011.

flooring. Specifically, these are exclusions for: 1) products made from Asian Birch or Acacia; 2) products consisting of seven plies or more; 3) products containing a high-density fiberboard core and click lock joint technology; 4) and "unfinished" flooring. Lumber Liquidators, *et al.*, assert that Petitioner's arguments and the Department's conclusions in the Scope Memo are incorrect and must be revised for purposes of this final determination.

- Lumber Liquidators, *et al.*, reference *Mitsubishi Electric*, stating that the Department has inherent discretion to ascertain the scope of its orders, the exercise of which "must reflect (the Department's) judgment regarding the scope and form of an order that will best effectuate the purpose of the AD laws and the violation found" and "{t}he responsibility to determine the proper scope of the investigation and of the AD order…is that of the Administration, not of the complainant before the agency."[245] Lumber Liquidators, *et al.*, assert that this supports their argument that the Department has the ability and discretion to narrow the scope of an investigation by removing products where the scope is found to be overly-inclusive and should not rely on Petitioner's assertions, because Petitioner's arguments are "mere conjecture and speculation."[246]

- Petitioner reiterates its positions as summarized in the Scope Memo,[247] as well as its support of the Department's conclusions in the Scope Memo.

Department's Position: The arguments Lumber Liquidators, *et al.*, present in their case brief are based almost entirely on their previous submissions,[248] both of which were received before the release of the Scope Memo, and were addressed within the Scope Memo.[249] Regarding Lumber Liquidators, *et al.*'s request for an exclusion for flooring with a HDF core and click lock joint technology, the ITC has stated that "{s}ome manufacturers incorporate a click and lock system,"[250] and as stated in the Scope Memo, an exclusion for HDF is not supported by the record.

Regarding Lumber Liquidators, *et al.*'s reliance on *Mitsubishi Electric* and *Valkia*, we find the references to these court cases to be misplaced. The Department does consult the Petitioner during the initiation process of an investigation to ensure that the products for which the Petitioner is seeking relief are included within the scope. However, the Department has the final decision on the scope, and in this case, we do not find that the scope is overly-inclusive. As such, we affirm our conclusions as stated in the Scope Memo,[251] and are not adopting Lumber Liquidators, *et al.*'s proposed exclusions for this final determination.

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[245] *See Mitsubishi Electric* at 1577, 1582-1583.
[246] *See Valkia* at 907, 920.
[247] *See* Scope Memo at 2-3.
[248] *See* Letter from Lumber Liquidators Services, LLC; Home Legend, LLC; US Floors, Inc.; and Metropolitan Hardwood Floors, Inc. to the Department, "Multilayered Wood Flooring from China—Comments on the Scope of the Investigation," November 30, 2010; and Letter from Lumber Liquidators Services, LLC and Home Legend, LLC to the Department, "Multilayered Wood Flooring from China—Rebuttal Comments on Scope of the Investigation," April 13, 2011.
[249] *See* Scope Memo at 5-10.
[250] *See ITC Preliminary Determination* at I-9.
[251] *See* Scope Memo at 5-10.

Surrogate Value Issues

Comment 13: Surrogate Value for Plywood

- The Samling Group argues that the Department should value its plywood input using contemporaneous domestic Philippine prices provided by three sources: (1) PWPA's monthly newsletter; (2) FMB; and/or (3) two news articles describing a rise in Philippine plywood prices. The Samling Group explains that these prices are the best available information on the record.

- Alternatively, the Samling Group argues that the Department should value its plywood input using prices provided by two domestic Indonesian sources: (1) ITTO; and/or (2) APKINDO. The Samling Group also suggests that all of the domestic Philippine and Indonesian data sources corroborate one another. On the other hand, the Samling Group asserts that the NSO import data used to value plywood for the *Preliminary Determination* (*i.e.*, Philippine HTS category 4412.99 – "Plywood veneered panes or other similar laminated wood – Other") cover merchandise that is not specific to the Samling Group's plywood input.

- Petitioner contends that the Department should continue to value plywood using NSO import data for HTS category 4412.99 for the final determination. In the alternative, Petitioner argues that the Department should value plywood using import data for NCNT plywood (*i.e.*, HTS categories 4412.32 or 4412.14) from secondary surrogate countries. Specifically, Petitioner suggests that the plywood import data for the eleven secondary surrogate countries on the record are specific to the NCNT plywood used by respondents and that the prices derived from those data reasonably reflect the value of NCNT plywood used by respondents.

- Alternatively, Petitioner contends that the Department should value plywood using 2009 Philippine NSO data for HTS categories 4412.13.10 (which covers plywood with each ply < 6 mm in thickness and at least one outer ply of tropical wood, plain) and 4412.19.10 (which covers plywood with each ply < 6 mm in thickness and at least one outer ply of coniferous wood, plain). Further, Petitioner argues that the domestic Philippine plywood prices offered by the Samling Group contain flaws that make them unusable for surrogate value purposes. Petitioner also contends that the Department cannot use the domestic Indonesian plywood prices provided by ITTO and APKINDO because the Department has previously found that the Indonesian wood industry is subsidized.[252]

[252] *See Coated Paper/Indonesia* (September 27, 2010) and accompanying IDM at 6-13.

Department's Position: For the final determination, the Department is relying only on the Philippine FMB's 2009 price data for lauan plywood, inflated to the POI, to calculate the surrogate value for plywood. In doing so, the Department is averaging the prices of 4.7625 millimeter ("mm") thick, 6.35 mm thick, and 12.7 mm thick plywood for all of 2009.

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors." It is the Department's stated practice to choose a surrogate value that represents country-wide price averages specific to the input, which are contemporaneous with the POR, net of taxes and import duties, and based on publicly available, non-aberrational, data from a single surrogate ME country.[253] If a surrogate value meets these criteria, the Department finds that it represents a reliable and appropriate price for valuing an individual input. Further, in interpreting the Department's *Policy Bulletin 04.1*, the CIT stated that, generally, "'product specificity' logically must be the primary consideration in determining {the} 'best available information'" to value a particular input.[254] In the instant case, the Philippine FMB's 2009 price data for lauan plywood are publicly available from our primary surrogate country (*i.e.*, the Philippines), they represent country-wide monthly plywood prices, they are specific to the respondents' reported plywood inputs and, while they are VAT inclusive, the Department has information on the record to deduct VAT from the reported prices.

In this case, respondents have provided the Department with information regarding the dimensions of the plywood they consumed.[255] Therefore, respondents' plywood inputs are easily categorized using the 2009 FMB price data, which assign prices for plywood based on plywood dimensions.[256] In addition, the Philippine FMB's price data are broken out by month and region in the Philippines, thus, providing country-wide price data for all of 2009.[257]

On the other hand, the Philippines' NSO plywood price data, upon which the Department relied for the *Preliminary Determination*, are listed under the HTS category 4412.99, "Plywood, veneered panels, and similar laminated wood - Other," without further specificity regarding plywood dimensions. Moreover, record evidence suggests that the six-digit HTS category 4412.99, "Other," contains at least two eight-digit HTS categories that identify items not used in the production of subject merchandise: (1) HTS category 4412.99.30, "Panels containing at least one layer of particleboard;" and (2) 4412.99.40, "Panels laminated with temperate species."[258] Therefore, while not necessarily determinative, in addition to not providing a product-dimension breakout for the input we are trying to value, the six-digit HTS category 4412.99 used in the

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[253] *See Chlorinated Isos/PRC* (November 17, 2010) and accompanying IDM at Comment 1; *see also Hot-Rolled Steel/Romania* (June 14, 2005) and accompanying IDM at Comment 2.
[254] *See Taian Ziyang Food (CIT 2011)* at 62.
[255] *See* Samling's Surrogate Value Submission, dated March 15, 2011, at 3 (stating that the plywood used by Samling had a thickness of 5.5 mm to 15 mm); *see also* RPC Verification Report, at 9 (identifying the dimensions of the plywood used by the Samling Group – *i.e.*, four feet-by-eight feet); *see also* Layo Wood's Comments for Preliminary Determination, dated May 2, 2011, at 20 (stating that the plywood used by Layo Wood had a thickness of 7 mm to 15 mm); Yuhua's Multilayered Wood Flooring from the People's Republic of China: Section D Supplemental Response, dated April 6, 2011, at Exhibit SD-23 (identifying the dimensions of the plywood used by Yuhua and stating that the plywood used by Yuhua had a thickness of 7.4 mm to 10 mm).
[256] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibit 3H.
[257] *Id.*
[258] *Id.* at Exhibit 1.

Preliminary Determination potentially contains items not used in the production of subject merchandise.[259] Accordingly, the NSO plywood price data used in the *Preliminary Determination* are not as product specific to respondents' plywood inputs as the 2009 FMB plywood price data and, as a result, are not the best available record information for valuing respondents' plywood.

Petitioner suggests that the FMB's price data for lauan plywood contain several flaws that make them unusable for valuing plywood in the final determination. We disagree with all of Petitioner's assertions. First, Petitioner argues that the Department cannot rely on Philippine FMB's price data because the prices are for "lauan" plywood. Specifically, Petitioner contends that lauan plywood is widely viewed as unsuitable for use in multilayered wood flooring. In support of this contention, Petitioner presents two articles that discuss the problems associated with using lauan plywood for flooring.[260] The Department disagrees with Petitioner that these articles provide evidence that lauan plywood is unsuitable for use in multilayered wood flooring. Despite Petitioner's strategic quoting of these two articles in order to suggest that, as a general rule, lauan plywood is not suitable for any type of flooring, the two articles are specifically related to the type of subfloor and underlayment that should be used when installing resilient flooring, not the type of plywood used in the production of multilayered wood flooring.[261] This is evident from the title of each article: "Panel Underlayment: What to Use and How to Use It" and "Lauan Plywood Subfloor."[262] Likewise, the discussion of lauan plywood within each article is clearly related to its use as a subfloor. For example, one article states that "Lauan…was never intended to be used as an underlayment for vinyl flooring."[263] The other article states that "Lauan plywood subfloor is a less-than-ideal subfloor that is usually made from the cheapest plywood available. Though it can be used as a top-layer subfloor when laid on top of sturdier plywood, many manufacturers do not recommend its use for tiling and other projects."[264] The latter quote actually indicates that lauan plywood can be used in certain flooring applications. Ultimately, the two articles presented by Petitioner say nothing about the use of lauan plywood for the production of multilayered wood flooring; thus, the Department does not agree with Petitioner's broad assertion that lauan plywood is unsuitable for multilayered wood flooring production. Additionally, however, Petitioner states that according to the articles, lauan plywood is characterized as the "cheapest plywood available."[265] The Department disagrees that this characterization alone is relevant in determining whether lauan plywood is used in the production of multilayered wood flooring.

Second, Petitioner asserts that the Department cannot rely on FMB's price data because lauan plywood is no longer readily available in the Philippines due to a total and indefinite logging ban imposed by President Aquino.[266] However, Petitioner's assertion in this regard is irrelevant. According to the article relied on by Petitioner, the logging ban in question was imposed in February 2011.[267] The Department is relying on 2009 FMB price data for the final

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[259] *Id.*
[260] *See* Petitioner's Resubmission of Post-Preliminary Surrogate Value Rebuttal, dated August 3, 2011, at Exhibit 1.
[261] *Id.*
[262] *Id.*
[263] *Id.*
[264] *Id.*
[265] *Id.*
[266] *See* Petitioner's Resubmission of Post-Preliminary Surrogate Value Rebuttal, dated August 3, 2011, at Exhibit 2.
[267] *Id.*

determination. Therefore, a 2011 Philippine logging ban has no bearing on the 2009 FMB price data.

Third, Petitioner argues that there is no information on the record regarding how the FMB collects its price data. Generally, in past cases, the Department has found government publications of data to be reliable and credible sources of information.[268] Where price data are official government statistics, they have been relied on to value FOPs.[269] In this case, while the Department does not have specific information on the record regarding how FMB collects its price data, the data in question are collected by a Philippines' government agency (*i.e.*, the Philippines' Department of Environment and Natural Resources, Forest Management Bureau) and are reported on the agencies' website.[270] In addition, there is no information on the record to undermine FMB's legitimacy, or the reliability of FMB's reported prices. Rather, based on record exhibits submitted by both the respondents and Petitioner, the FMB appears to be heavily involved in compiling a variety of data related to the wood industry in the Philippines.[271] Further, the price data in question represent country-wide prices that are maintained on a regular basis (*i.e.*, the data represent monthly retail prices for lauan plywood provided by the FMB).[272] Thus, the Department finds that the FMB data are representative of the Philippine market in that they contain data points for several different Philippine regions for each month of 2009.[273]

Fourth, Petitioner argues that the Department cannot use the 2010 FMB price data for lauan plywood because the prices are labeled "preliminary as of January 2011." Petitioner asserts that in *WBF/PRC* (August 17, 2009), the Department did not use 2007 FMB price data to value plywood because the data on the record were labeled as "preliminary." In that case, the Department specifically stated, "{w}ith regard to Yihua Timber's FMB data, the Department agrees with Petitioner's statement that the fact that this data is labeled 'Preliminary' renders the data unreliable for surrogate value purposes as we have no means of discerning how significantly they may vary from the 'final' data."[274] In this case, however, the Department has two sets of FMB price data on the record: (1) 2010 FMB price data for lauan plywood; and (2) 2009 FMB price data for lauan plywood.[275] Specifically, the 2010 price data were provided to the Samling Group by the director of the FMB in an email as an Excel file attachment. In the email, the FMB director states that "{a}ttached is an Excel file on Prices of Lauan Plywood in 2010 (*preliminary* as of January 2011)."[276] On the other hand, the 2009 price data were provided by the Samling Group from the FMB website and are labeled "Table 4.04 Monthly Retail Prices of Lauan

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[268] *See Lock Washers/PRC* (May 27, 2010) and accompanying IDM at Comment 3; *see also Sebacic Acid/PRC* (December 16, 2004) and accompanying IDM at Comment 1.
[269] *See Lock Washers/PRC* (May 27, 2010) and accompanying IDM at Comment 3.
[270] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibits 3F-3H.
[271] *See id.* at Exhibits 2K-2N; *see also* Petitioner's Resubmission of Post-Preliminary Surrogate Value Rebuttal, dated August 3, 2011, at Exhibit 3.
[272] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibits 3F-3H.
[273] *Id.*
[274] *See WBF/PRC* (August 17, 2009) and accompanying IDM at Comment 4 (where the data were clearly labeled "Average Domestic Price of Wood panel Board: 2007/Preliminary").
[275] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibits 3F-3H.
[276] *See id*. at Exhibit 3F (emphasis added).

Plywood: 2009."[277] Accordingly, while the 2010 FMB data are clearly "preliminary," there is no indication that the 2009 prices are "preliminary." Thus, while the Department agrees with Petitioner that it should not rely on the 2010 FMB price data for the final determination because the data are "preliminary," the 2009 FMB price data are reliable for valuing plywood. Further, in *WBF/PRC* (August 17, 2009), the Department stated that because the 2007 FMB data were labeled "preliminary," there was sufficient evidence to demonstrate the data's unreliability "and thus it {was} unnecessary to reach conclusions with respect to Petitioner's other arguments."[278] As a result, because the Department's only stated reason for not using the 2007 FMB price data was that the data were labeled "preliminary," the Department's decision to rely on 2009 FMB price data in this case is not inconsistent.[279]

Fifth, Petitioner contends that the respondents in this investigation used NCNT plywood, not tropical plywood like lauan, in the production of multilayered wood flooring. However, it is unclear how Petitioner concludes that the respondents in this case only used NCNT plywood. It appears that Petitioner is basing this assertion on Note One to Chapter 44 of the Philippines HTS code.[280] Note One to Chapter 44 states the following:

> For the purposes of subheadings 4403.41 to 4403.49, 4407.24 to 4407.29, 4408.31 to 4408.39, and 4412.13 to 4412.99, the expression 'tropical wood' means one of the following types of wood: Abura, Acajou d'Afrique, Afrormosia, Ako, Alan, Andiroba, Aningre, Avodire, AzoM, Baiau, Balsa, Bosse clair, Bosse fonce, Cativo, Cedro, Dabema, Dark Red Meranti, Dibetou, Doussie, Framlre, Freijo, Fromager, Fuma, Geronggang, llomba, Imbuia, Ipe, Iroko, Jaboty, Jelutong, Jequltiba, Jongkong, Kapur, Kempas, Kerulng. Kosipo, Kotibe, Koto, Light Red Merantl, Limba, Louro, Macaranduba, Mahogany, Makore, Mandioqueira, Mansonia, Mengkuiang, Meranti Bakau, Merawan, Merbau, Merpauh, Mersawa, Moabi, Niangon, Nyatoh, Obeche, Okoume, Onzablli, Orey, Ovengkol, Oligo, Padauk, Paldao, Pallssandre de Guatemala, Pallssandre de Para, Pallssandre de Rio, Pallssandre de Rose, Pau Amareio, Pau Marfim, Pulal, Punah, Quaruba, Ramin, Sapelli, Saqui-Saqui, Sepellr, Sipo, Sucupira, Suren, Tauan, Teak, Tiama, Tola, Virola, White Lauan, White Merimtl, White Seraya, Yellow Meranti.[281]

It appears that Petitioner is arguing that because the plywood species used by Yuhua and Layo Wood are not included on the above cited wood species list, it means that the respondents are not using tropical wood for plywood; rather, respondents are using NCNT plywood. However, in its rebuttal brief, Petitioner affirmatively states that "at least one of the respondents (Layo) did use okoume wood in the plywood that it used in the production" of multilayered wood flooring and that okoume wood is a tropical wood.[282] In fact, okoume wood is identified as a tropical wood according to list provided above. Moreover, as discussed in greater detail below, as an alternative for valuing respondents' plywood, Petitioner suggests that the Department use 2009

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[277] *See id*. at Exhibit 3H.
[278] *Id.*
[279] *See WBF/PRC* (August 17, 2009) and accompanying IDM at Comment 4.
[280] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at FN 37.
[281] *See* Fine Furniture's Submission of Publicly-Available Surrogate Value Information, dated March 15, 2011 ("Fine Furniture's March 15, 2011, Submission"), at Exhibit 5.
[282] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at 18-19, FN 36, and FN 37.

Philippine NSO data for HTS 4412.13.10, "Plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of tropical wood specified in Subheading Note 1 to this Chapter, Plain."[283] Thus, despite arguing that the respondents' did not use tropical plywood, Petitioner subsequently suggests that the Department value respondents' plywood with an NSO HTS category for tropical plywood. Consequently, Petitioner's argument that respondents' did not use tropical plywood in the production of multilayered wood flooring is unclear and contradictory, particularly because Petitioner admits that "tropical plywood…was used by one of the respondents to this investigation."[284]

Furthermore, it should be noted that Note One to Chapter 44 of the Philippines HTS plainly states that it is provided for the purpose of classification of tropical woods under subheadings 4403.41 to 4403.49, 4407.24 to 4407.29, 4408.31 to 4408.39, and 4412.13 to 4412.99.[285] Therefore, it is not clear that Note One to Chapter 44 is an all-inclusive list of tropical woods. As a general matter, the Department has no information to confirm the species of wood that should be categorized as tropical woods outside the context of Chapter 44 of the HTS. Thus, Petitioner's argument that the respondents only used NCNT plywood, which is merely based on the wood species identified in Note One to Chapter 44, is not necessarily accurate. The argument is only precise in the context of classifying plywood under Chapter 44 of the Philippines HTS, which the Department has decided not to use in its final determination.

Rather, the Department is using 2009 FMB price data for lauan plywood. According to one of the articles identified above, which was submitted by Petitioner, "the name l{a}uan comes from trees found in the Philippines but has become a generic term in the United States for imported tropical plywood."[286] As a result, it appears that, with respect to its use in a Philippine publication such as FMB, "lauan plywood" refers to plywood from trees found in the Philippines. Thus, Petitioner's contradictory argument regarding the plywood species used by respondents and admission that at least one respondent uses tropical plywood does not impugn the 2009 FMB price data for lauan plywood for classifying respondents' plywood. Thus, the Department has determined that the 2009 FMB price data for lauan plywood are the best information on the record. Unlike the Philippines NSO data used in the *Preliminary Determination*, the 2009 FMB data provide prices for plywood that are based on plywood dimensions, which is more specific to the respondents' plywood inputs.[287]

Petitioner suggests two alternative sources for valuing plywood using NSO data within Chapter 44 of the Philippines HTS: (1) 2009 Philippine NSO data for HTS category 4412.13.10, which contains plywood consisting of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of tropical wood specified in Subheading Note 1 to this Chapter, Plain; and (2) 2009 Philippine NSO data for HTS category 4412.19.10, which contains plywood consisting of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of non-coniferous wood, Plain.[288] Petitioner argues that despite the fact that respondents used NCNT

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[283] *See* Fine Furniture's March 15, 2011, Submission at Exhibit 5.
[284] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at FN 36.
[285] *Id.*
[286] *See* Petitioner's Resubmission of Post-Preliminary Surrogate Value Rebuttal, dated August 3, 2011, at Exhibit 2.
[287] *See* Fine Furniture's March 15, 2011, Submission at Exhibit 5.
[288] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at 18 and Exhibit 2; *see also* Fine Furniture's March 15, 2011, Submission at Exhibit 5.

plywood, there is no POI or 2009 Philippine import data for NCNT plywood. Therefore, as an alternative, Petitioner suggests that the Department weight-average the NSO data from HTS categories 4412.13.10 and 4412.19.10. For the final determination, the Department is not relying on Petitioner's suggestion. Principally, both HTS categories suggested by Petitioner are for plywood with each ply less than 6 mm;[289] thus, the HTS categories do not provide the Department with a way to calculate prices based on total plywood thickness, length, or width. Plywood dimensions are important in identifying the most specific plywood surrogate value available. As the FMB plywood price data demonstrate, while there is a direct relationship between price and thickness for an individual piece of plywood, there is an inverse relationship between the price of a cubic meter of plywood and plywood thickness.[290] For example, while the price of a 4.7652 mm thick, four-by-eight foot piece of plywood is less than the price of a 12.7 mm thick, four-by-eight foot piece of plywood, the price for a cubic meter of 4.7652 mm thick plywood is greater than the price for a cubic meter of 12.7 mm thick plywood.[291] In this case, the respondents have reported there plywood consumption on a cubic meter basis; as a result, the Department is calculating a surrogate value for plywood based on price-per-cubic meter. However, the Philippines HTS provides no way to differentiate the price of thin versus thick plywood or, more importantly, the price of the plywood with thicknesses similar to those used by the respondents. Because the Department knows the total thickness of the plywood used by respondents, when compared to the 2009 FMB price data for lauan plywood, the 2009 NSO data from HTS categories 4412.13.10 and 4412.19.10 are not the best available information on the record for valuing plywood.

Additionally, Petitioner suggests that the Department should value plywood using import data for NCNT plywood (*i.e.*, HTS categories 4412.32 or 4412.14) from eleven secondary surrogate countries for which the Petitioner has put information on the record.[292] Specifically, Petitioner suggests various options for valuing plywood using data from these eleven secondary surrogate countries offered by Petitioner (*i.e.*, a simple average of the AUVs from the eleven countries, a weighted average of the AUVs from the eleven countries, or an AUV calculated using only data from Ukraine – the highest volume secondary surrogate country). Generally, however, the Department "normally will value all factors in a single surrogate country,"[293] In this case, the Department has determined that its primary surrogate country for valuing factors of production is the Philippines.[294] Because the Department has a reliable surrogate value for plywood in the 2009 FMB price data, the Department does not need to depart from its primary surrogate country to find a reliable surrogate value. Consequently, the Department is not considering the plywood price data from the eleven alternative surrogate countries submitted by Petitioner. The Department notes that Petitioner contends that the eleven secondary surrogate countries provide data that are specific to the NCNT plywood used by respondents and that the prices derived from those data reasonably reflect the value of NCNT plywood used by respondents. However, the

[289] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at 18 and Exhibit 2.
[290] *Id.*
[291] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibits 1 and 3F-3H.
[292] *See* Petitioner's Resubmission of Post-Preliminary Surrogate Value Comments, dated August 3, 2011, at Exhibit 18.
[293] 19 CFR § 351.408(c)(2).
[294] *See* Surrogate Country Selection Memorandum.

Department does not agree that the data from these alternative surrogate countries are the best available information on the record.

Similarly, in accordance with 19 CFR § 351.408(c)(2), because the Department has a reliable surrogate value source for plywood from the primary surrogate country (*i.e.*, the Philippines) in this investigation, the Department is not relying on the two domestic Indonesian sources provided by the Samling Group: ITTO and APKINDO. Because the Department "normally will value all factors in a single surrogate country,"[295] it is not necessary to address the Samling Group's and Petitioner's arguments regarding the use of ITTO and APKINDO as data sources.

Moreover, the Samling Group suggests that, in addition to using the domestic FMB price data for plywood, the Department should use two other domestic Philippine sources to value plywood: (1) PWPA's monthly newsletter; and (2) two news articles describing a rise in Philippine plywood prices. Regarding the PWPA's monthly newsletter, the Department agrees with Petitioner's assertion that based on the information on the record, it is not useable as a surrogate value source for plywood. Similar to the Department's decision in *WBF/PRC* (August 18, 2010), the record in this case lacks information to confirm the PWPA's reliability.[296] In particular, the Samling Group has only placed select pages of the different PWPA newsletters on the record and, therefore, the Department cannot adequately assess what type of organization PWPA is, its role in the Philippine wood industry, or how it collects its data.[297] Further, there is no information on the record indicating how the PWPA conducted its price survey for its newsletter.[298] In addition, the PWPA's data do not represent countrywide prices because the survey only covers one region of the Philippines (*i.e.*, the greater Manila area).[299] For these reasons, the PWPA's monthly newsletter is not the best available information on the record for valuing plywood and, therefore, the Department is not relying on this source for the final determination.

In addition, the Department is not relying on the two news articles containing plywood prices submitted by the Samling Group. Specifically, the two articles reference plywood prices that were provided by the executive vice-president of the PWPA.[300] There is no information provided in the articles regarding how the prices were obtained and, thus, the Department has no information to assess the source, or reliability, of the prices cited. Consequently, the news articles are also not the best available information on the record for valuing plywood.

Finally, because the Department is relying on the domestic 2009 FMB price data for plywood, the Department notes that it is not necessary to address the Samling Group's argument that given a sufficient local supply of plywood in the Philippines, Samling suggests that there is no need for Philippine producers to import plywood, particularly when the price of imported plywood is greater than the domestically available plywood. Thus, it is also not necessary to address Petitioner's rebuttal argument in this regard.

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[295] 19 CFR § 351.408(c)(2).
[296] *See WBF/PRC* (August 18, 2010) at Comment 4.
[297] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibits 1 and 3A.
[298] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibits 1 and 3A.
[299] *Id.*
[300] *Id.* at Exhibits 3I-3J.

In sum, for the final determination, the Department is relying on the Philippine FMB's 2009 price data for lauan plywood. These data are the best available information on the record for valuing plywood: they are publicly available from our primary surrogate country (*i.e.*, the Philippines), they represent country-wide monthly plywood price data, and they are specific to the respondents' reported plywood inputs in that they encompass the dimensions and varying thicknesses reported by respondents. In addition, while these prices are VAT inclusive and not contemporaneous with the POI, the Department has information on the record to deduct VAT from the reported prices and inflate the prices to the POI, respectively. In particular, regarding VAT, the Department has record evidence from the Philippine Bureau of Internal Revenue indicating that a twelve-percent VAT is imposed on the sale of goods.[301] In addition, the Department has email statements from the FMB indicating that its stated prices are "retailer's price{s} and therefore VAT inclusive."[302] Thus, the Department is calculating a surrogate plywood price from FMB data that is exclusive of the twelve-percent VAT imposed by the Philippine Bureau of Internal Revenue.[303]

Comment 14: Surrogate Value for Tropical Face Veneer

- Petitioner argues that Philippine NSO import data that the Department used in *Preliminary Determination* to value tropical face veneers are non-contemporaneous, insufficiently specific, and include aberrational data from Malaysian imports.[304] Petitioner placed benchmark data on the record and argues that the AUV of Philippine imports from Malaysia is inconsistent with data from other surrogate countries, U.S. import statistics, and respondents' purchase and consumption prices. Petitioner argues that the Department should turn to India or Morocco as a secondary surrogate country.

- Samling Group argues that price variation across tropical face veneers is not sufficient to determine an aberration. Samling Group argues that product variation across tropical face veneers explains such price variation. Samling Group also argues that neither Indian nor Moroccan import data present a viable alternative.[305]

- Layo Wood agrees with Petitioner's argument that the HTS code used by the Department in *Preliminary Determination* is insufficiently specific, and argues that the Department should use the more specific HTS code for the final determination. Layo Wood also argues that neither Indian nor Moroccan import data present a viable alternative.[306]

Department's Position: For the final results, the Department is relying on the 2009 Philippine NSO import data using HTS subheading 4408.39.90 ("Sheets for veneering, for plywood or for 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 6mm/Tropical Wood/Other") to value tropical face veneers.

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[301] *See* Samling's Re-filing of Post-Preliminary Surrogate Value Submission, dated August 3, 2011, at Exhibits 1 and 3E-3F.
[302] *Id.*
[303] *Id.*
[304] *See* Petitioner's Case Brief, dated August 4, 2011, at 17-22.
[305] *See* The Samling Group's Case Brief, dated August 9, 2011, at 11-13.
[306] *See* Layo Wood's Rebuttal Brief, dated August 9, 2011, at 8-10.

The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[307] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POI, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[308] As established in the *Preliminary Determination*, the Department continues to find that the Philippine NSO import data are publicly available, broad market averages, contemporaneous with the POI, tax-exclusive, and specific to the input,[309] thus satisfying the critical elements of the Department's SV test. Upon further examination of the HTS category descriptions on the record of this investigation, the Department finds, as argued by both Petitioner and respondents, that HTS subheading 4408.39.90 is more specific to tropical face veneers than HTS subheading 4408.39, which the Department used in the *Preliminary Determination*. Because HTS category 4408.39 includes data within HTS subheading 4408.39.10 ("Jelutong wood slats prepared for pencil manufacture"), the Department agrees that it is not the most accurate category with which to value tropical face veneers.

As discussed above with respect to NCNT face veneers, when a party claims that a particular SV is not appropriate to value the FOP in question, the Department has determined that the burden is on that party to provide evidence demonstrating the inadequacy of said SV.[310] Therefore, as with NCNT face veneer, above, the Department first evaluated whether Petitioner had met its evidentiary burden to demonstrate that the NSO data were inadequate.

For many of the same reasons described in the NCNT face veneer section, above, the Department finds that Petitioner has not sufficiently demonstrated the inadequacy of the Philippine NSO import data within HTS subheading 4408.39.90. The Department notes that Petitioner does not argue that HTS category 4408.39.90 is not the correct category to value tropical face veneer. Instead, Petitioner claims that the classification of Malaysian exports to the Philippines under a ten-digit Malaysian HTS category is evidence that Philippine imports under 4408.39.90 are not, in fact, face veneers. The Department disagrees that Petitioner's comparison proves that the Philippine import data do not contain tropical face veneers HTS categories are harmonized among countries only up to the six-digit level, so the Department cannot ascertain the accuracy of the eight-digit Philippines import category by comparing it to the ten-digit Malaysian export category. On the contrary, because the Philippine import data used by the Department are obtained from the Philippine NSO, the government agency responsible for gathering such data, we find it to be reliable. As with NCNT face veneer, Petitioner argues that the AUV of Philippine imports from Malaysia for tropical face veneer is aberrationally low, and that data from Malaysia should, therefore, be excluded from the AUV.[311] Petitioner suggests using the following for benchmark purposes, to support its argument that prices of Philippine imports from Malaysia are aberrationally low: 1) Moroccan imports under HTS categories

[307] *LTP* and accompanying IDM at Comment 9.
[308] *See, e.g., TRBs* at Comment 6.
[309] *See Preliminary Determination.*
[310] *See TRBs* at Comment 6; *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 IDM at Comment 6.
[311] *See* Petitioner's Case Brief, dated August 4, 2011, at 17-18.

4408.39.6100 ("Of fine wood") and 4408.39.6900 ("Other") and Indian imports under HTS category 4408.39.90 ("Other"); 2) United States imports under HTS category 4408.39.0190 ("Other tropical"); and 3) the ME and NME purchase prices of Layo Wood and the Samling Group. [312]

Petitioner argues that the AUV of Philippine imports from Malaysia is inconsistent with the AUVs of Indian and Moroccan imports under similar HTS categories.[313] The Department finds that it cannot reasonably compare Petitioner's selected HTS categories because they may contain different products. As stated above, HTS categories are harmonized among countries only up to the six-digit level, so attempting to compare AUVs among different countries' eight-digit categories does not provide a reliable benchmark. Additionally, even if the Department found that it could compare the eight-digit "other" HTS categories of the Philippines and India, the Department notes that there is no way to determine that one value is aberrational when comparing only two data points. In order to demonstrate that any value is unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison. With only two values to compare, one could just as easily find the higher value aberrational in comparison to the lower value, as to find the lower value aberrational in comparison to the higher value. Therefore, the Department finds that Petitioner's benchmarking comparisons to Moroccan and Indian import data does not adequately demonstrate that the Philippine data are unreliable.

Regarding Petitioner's U.S. benchmarking data, the Department finds that the economic development of the United States is not comparable to the PRC or to the countries considered as potential surrogates and, as a result, its use as a pricing benchmark is inappropriate.[314] The Department finds that the record of the present investigation contains SV data from a Philippine HTS category which is sufficiently detailed[315] to permit valuation for the tropical face veneer input without resorting to U.S. benchmarking data. Therefore, unlike previous cases in which the Department determined that a comparison to U.S. price data was appropriate, such a comparison is unnecessary in the instant investigation.

Finally, Petitioner argues that the prices paid by respondents to their ME and NME suppliers for tropical face veneers are inconsistent with the Department's *Preliminary Determination* surrogate value.[316] The Department finds that Layo Wood's and the Samling Group's ME and NME purchase prices are unsuitable as benchmarks because these prices are proprietary information of the respective companies, and are not necessarily representative of industry-wide

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[312] *See* Petitioner's Case Brief, dated August 4, 2011, at 19-21.
[313] *See* Petitioner's Case Brief, dated August 4, 2011, at 19-20.
[314] *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) at Comment 11 ("Although the Department has in the past used non-surrogate country data as a benchmark to determine the reliability of surrogate data, the purpose of such test is not to demonstrate that differences exist, but rather to determine whether surrogate data is distorted or otherwise unreliable under certain specific circumstances… The Department used U.S. import data as a benchmark because the U.S. HTS subheading was the only HTS customs subheading specific enough to capture an appropriate bearing-quality steel import value. These data were then used to gauge the reliability of the less-specific Indian import values.").
[315] HTS subheading 4408.39.90 contains "Sheets for veneering, for plywood or for 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 6mm/Tropical Wood/Other."
[316] *See* Petitioner's Case Brief, dated August 4, 2011, at 21.

prices available to other producers. Therefore, they do not meet the Department's preference for publicly available information.[317] The Department also finds prices paid to NME suppliers to be unreliable by their very nature and, therefore, inappropriate for use as a benchmark.[318] As alternative SVs, Petitioner suggests using data from one of two secondary surrogate countries: Indian data under HTS category 4408.39.90 ("Other"); or Moroccan data under HTS category 4408.39.6100 ("Of fine wood"). The Department finds that neither of these alternatives is preferable to the Philippine NSO data, as they each would require moving away from the primary surrogate country. As stated above, the Department finds that Petitioner's comparisons to benchmark prices and Malaysian export data do not prove that data from any individual countries within the Philippine import data are distorted or aberrational. The Department finds that no evidence on the record demonstrates that the Philippine NSO data are unusable, nor that any proffered alternative SV data are the best available information, and the Department, therefore, finds it appropriate to continue using Philippine HTS category 4408.39.90 to value tropical face veneer for the final determination.

Comment 15: Surrogate Value for Non-Coniferous, Non-Tropical ("NCNT") Face Veneer

- Petitioner argues that the Philippine NSO import data that the Department used in the *Preliminary Determination* to value NCNT face veneers are distorted because of aberrational data from Malaysian imports.[319] Petitioner argues that the SV is inconsistent with respondents' purchase and consumption prices and that the corresponding HTS code captures a set of goods dissimilar to those respondents use in the production of subject merchandise. Specifically, Petitioner argues that although Philippines import data show imports of Malaysian NCNT face veneers during the POI, the corresponding Malaysian export data show that these NCNT veneers were categorized as "other" as opposed to "face veneer sheets." Therefore, the imports from Malaysia were not face veneers, making the Malaysian data aberrational. Petitioner argues that the Department should either remove these data from its calculation, or turn to India or Morocco as a secondary surrogate country.

- Samling Group and Layo Wood argue that price variation within the Philippine NSO import data is not sufficient to determine an aberration, and that product variation across NCNT face veneers likely explains any price variation.[320] Layo Wood also argues that, if the Department determines that Philippine NSO import data for NCNT face veneers are not viable, the Department should use Indonesian domestic prices as the surrogate value.[321]

Department's Position: For the final determination, the Department is continuing to rely on the POI Philippine NSO import data to value NCNT face veneers using HTS subheading 4408.90.10

[317] *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 IDM at Comment 5 ("{T}he fact that the … information is proprietary makes it the sort of information we normally would not use as a surrogate value.").
[318] *See 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), and accompanying IDM at Comment 2.
[319] *See* Petitioner's Case Brief, dated August 4, 2011, at 9-17.
[320] *See* Samling Group's Case Brief, dated August 9, 2011, at 5-10; Layo Wood's Rebuttal Brief, dated August 9, 2011, at 1-8.
[321] *See* Layo Wood's Rebuttal Brief, dated August 9, 2011, at 1-8.

("Sheets for veneering, for plywood or for 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 6mm/Other/Face Veneer Sheets"), consistent with the *Preliminary Determination*.

The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[322] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POI, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[323] As established in the *Preliminary Determination*, the Department continues to find that the Philippine NSO import data are publicly available, broad market averages, contemporaneous with the POI, tax-exclusive, and specific to the input in question,[324] satisfying the critical elements of the Department's SV test. Moreover, when a party claims that a particular SV is not appropriate to value a certain FOP, the burden is on that party to provide evidence demonstrating the inadequacy of the SV.[325] As explained below, we find that Petitioner has failed to provide such evidence demonstrating the inadequacy of the Philippine NSO data or that another value is more appropriate.

The Department first evaluated whether Petitioner had met its burden to demonstrate the inadequacy of the Philippine NSO data. As an initial matter, the Department notes that Petitioner does not argue that HTS category 4408.90.10 is not the correct category to value NCNT face veneer. Instead, Petitioner claims that the classification of Malaysian exports to the Philippines under a ten-digit Malaysian HTS category is evidence that Philippine imports under 4408.90.10 are not, in fact, face veneers. The Department disagrees that Petitioner's comparison proves that the Philippine import data do not contain NCNT face veneers. HTS categories are harmonized among countries only up to the six-digit level, so the Department cannot ascertain the accuracy of the eight-digit Philippines import category by comparing it to the ten-digit Malaysian export category. Furthermore, because the Philippine import data used by the Department are obtained from the Philippine NSO, the government agency responsible for gathering such data, the Department finds it to be reliable.

Petitioner also states that the AUV of imports into the Philippines from Malaysia within HTS category 4408.90.10 is aberrationally low compared with the AUVs of imports into the Philippines from other countries (*i.e.*, the Netherlands, Singapore, the United States, the United Kingdom, and France).[326] Petitioner suggests using the following for benchmark purposes, to support its argument that prices of Philippine imports from Malaysia are aberrationally low: 1) Moroccan imports under HTS categories 4408.90.62 ("Of fine wood") and 4408.90.6800 ("Other") and Indian imports under HTS category 4408.90.90 ("Other"); 2) United States

[322] *See LTP*, 73 FR 57329 (October 2, 2008), and accompanying IDM at Comment 9.
[323] *See, e.g., TRBs*, 74 FR 3987 (January 22, 2009) and accompanying IDM at Comment 6.
[324] *See Preliminary Determination*, 76 FR 30656 (May 26, 2011).
[325] *See TRBs* at Comment 6; *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 IDM at Comment 6.
[326] *See* Petitioner's Case Brief, dated August 4, 2011, at 9-10.

imports for various wood species falling within HTS category 4408.90.01; and 3) the ME and NME purchase prices of Layo Wood and the Samling Group. [327]

Petitioner argues that the AUV of Philippine imports from Malaysia is inconsistent with the AUVs of Indian and Moroccan imports under similar HTS categories.[328] The Department finds that it cannot reasonably compare Petitioner's selected HTS categories because they may contain different products. As stated above, HTS categories are harmonized among countries only up to the six-digit level, so attempting to compare AUVs among different countries' eight-digit categories does not provide a reliable benchmark. While the Philippine HTS category covers other (*i.e.*, NCNT) face veneer sheets, the proposed Moroccan HTS categories cover "fine wood" and "other," and it is unclear whether either of these Moroccan categories even contain the same products as the Philippine category. Similarly, the Indian HTS category is a basket "other/other" category, and the Department cannot be certain that the same products are classified across these different eight-digit categories. Therefore, the Department finds that Petitioner's benchmarking comparisons to Moroccan and Indian import data does not adequately demonstrate that the Philippine data are unreliable.

Regarding Petitioner's U.S. benchmarking data, the Department finds that the economic development of the United States is not comparable to the PRC or to the countries considered as potential surrogates and, as a result, its use as a pricing benchmark is inappropriate.[329] The Department finds that the record of the present investigation contains SV data from a Philippine HTS category which is sufficiently detailed[330] to permit valuation for the NCNT face veneer input without resorting to U.S. benchmarking data. Therefore, unlike previous cases in which the Department determined that a comparison to U.S. price data was appropriate, such a comparison is unnecessary in the instant investigation.

Finally, Petitioner argues that the prices paid by respondents to their ME and NME suppliers for NCNT face veneers are inconsistent with the Department's *Preliminary Determination* surrogate value.[331] The Department finds that Layo Wood's and the Samling Group's ME and NME purchase prices are unsuitable as benchmarks because these prices are proprietary information of the respective companies, and are not necessarily representative of industry-wide prices available to other producers. Therefore, they do not meet the Department's preference for publicly

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[327] *See* Petitioner's Case Brief, dated August 4, 2011, at 11-15.
[328] *See* Petitioner's Case Brief, dated August 4, 2011, at 11-12.
[329] *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) at Comment 11 ("Although the Department has in the past used non-surrogate country data as a benchmark to determine the reliability of surrogate data, the purpose of such test is not to demonstrate that differences exist, but rather to determine whether surrogate data is distorted or otherwise unreliable under certain specific circumstances… The Department used U.S. import data as a benchmark because the U.S. HTS subheading was the only HTS customs subheading specific enough to capture an appropriate bearing-quality steel import value. These data were then used to gauge the reliability of the less-specific Indian import values.").
[330] HTS category 4408.90.10 contains "Sheets for veneering, for plywood or for 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 6mm/Other/Face Veneer Sheets."
[331] *See* Petitioner's Case Brief, dated August 4, 2011, at 15.

available information.[332] The Department also finds prices paid to NME suppliers to be unreliable by their very nature and, therefore, inappropriate for use as a benchmark.[333]

Petitioner suggests calculating an AUV from the data remaining in category 4408.90.10 after removing the data from Malaysia and France.[334] Petitioner does not argue that the data from France are problematic; rather, it suggests removing the highest country AUV within the HTS category, France, along with the lowest country AUV, Malaysia, before calculating the weighted AUV from the remaining countries.[335] In addition to Philippine imports under HTS category 4408.90.10, exclusive of Malaysian and French data, Petitioner suggests alternative SV data from two sources: Indian imports under HTS category 4408.90.90 ("Other") and Moroccan imports under HTS category 4408.90.6200 ("Of fine wood").

As stated above, regarding Petitioner's suggestion to remove data for Philippine imports from Malaysia and France, the Department finds that Petitioner's comparisons to benchmark prices and Malaysian export data do not prove that data from any individual countries within the Philippine import data are distorted or unusable. Furthermore, the relevant test is to determine whether the AUV in the aggregate is aberrational.[336] Otherwise, parties would advocate the manipulation of data by removing one or more line items they find objectionable, with the result that we would not be using the average prices for that category, but some subset thereof. Where a party is able to demonstrate that the AUV for an entire category is aberrational or otherwise unreliable, the Department will reject that particular category and use another surrogate value.[337] In this case, Petitioner has not shown that record evidence supports its conclusion that the Philippine AUV for HTS category 4408.90.10 is aberrational.

Furthermore, pursuant to 19 CFR 351.408(c)(2), the Department is valuing NCNT face veneers based on Philippine NSO import data and there is no need to address Layo Wood's submission of Indonesian domestic prices.[338]

Ultimately, the Department finds that no evidence on the record demonstrates that the Philippine NSO data are unusable, nor that any of Petitioner's proffered alternative SV data are the best available information, and the Department, therefore, finds it appropriate to continue using Philippine HTS category 4408.90.10 to value NCNT face veneer for the final determination.

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[332] *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 IDM at Comment 5 ("{T}he fact that the … information is proprietary makes it the sort of information we normally would not use as a surrogate value.").
[333] *See 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), and accompanying IDM at Comment 2.
[334] *See* Petitioner's Case Brief, dated August 4, 2011, at 9-10.
[335] *See* Petitioner's Case Brief, dated August 4, 2011, at 9-10.
[336] *See, e.g., Certain Hot-Rolled Carbon Steep Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005) and accompanying IDM at Comment 2, where the Department explained that to test the reliability of surrogate values alleged to be aberrational, it is appropriate to compare the selected surrogate value to the AUVs calculated for the same period using data from the other designated surrogate countries.
[337] *See, e.g., id.; see also Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying IDM at Comment 11.
[338] *See* Resubmission of Layo Wood's Post-Preliminary SV Submission, dated August 3, 2011, at Exhibit 4.

Comment 16: Surrogate Value for NCNT Core Veneer

- Petitioner argues that Philippine import data under subheading 4408.90.10, which was used in the *Preliminary Determination* to value NCNT core veneer, should not be used in the final determination. Petitioner argues that this subheading covers NCNT face veneer, but does not include NCNT core veneers. Petitioner claims NCNT core veneers are classified under subheading 4408.90.90-06. Petitioner claims that the record shows that the only Philippine imports for 4408.90.90-06 were in 2009 and, thus, non-contemporaneous. Because the 2009 import data for Philippine HTS 4408.90.90-06 are from a single country (Singapore), are low volume, and are on an FOB basis, Petitioner claims the Department should value NCNT core veneer with either Indian import data for HTS 4408.90.90 or Philippine import data for the 8-digit HTS 4408.90.90.

- Layo Wood claims that its core veneers are cut from fast-growing plantation trees. Layo Wood also claims that the Department has afforded "weight to party admissions of the correct classification of a particular input in previous recent cases involving similar inputs (*i.e.*, plywood)."[339] Layo Wood emphasizes that, as NSO does not report import data past the 8th digit, the Department should use data obtained from GTA for imports under Philippine HTS 4408.9090-06 to value NCNT core veneer because GTA data come from the same sources as the NSO data.

- Layo Wood additionally states that the Department should not use the basket category of 4408.90.90 in lieu of 4408.90.90-06, as 4408.90.90 contains what Layo Wood believes to be inappropriate subcategories (*e.g.*, "veneer corestock," "lauan sawnwood"). Layo Wood claims that "veneer corestock" is particularly inappropriate, as it entails alternating layers of specialty wood pressed or glued into one veneer, and the transactions included in the sub-category were extremely small. Layo Wood states that Petitioner has admitted that using the subcategories that include veneer corestock and lauan wood are not suitable for the calculation of the surrogate value of NCNT core veneer.

Department's Position: For the final determination the Department has valued NCNT core veneer using Philippine NSO data in HTS 4408.90.90 for the POI. The Department's practice is to draw surrogate values, when possible, from period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation, and publicly available data.[340] Contrary to Layo Wood's assertions, the Department's practice is not to prioritize any one of these factors but, rather, the Department makes a balanced determination based upon the best available information on the record in the particular proceeding.[341]

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[339] *See* Layo Wood's Case Brief, dated August 24, 2011, at page 11, citing *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010).
[340] *See PET Film* and accompanying IDM at Comment 2.
[341] *See id.*; *Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.

As respondents state, data from Philippine HTS 4408.90.90-06 are not available through the NSO data on the record.[342] Layo Wood claims that the Department ought to use data from Philippine HTS 4408.90.90-06 obtained from GTA. The Department used NSO data in the *Preliminary Determination*, and again here in the final determination, because the Philippine NSO is the only data source on the record that provides data on a net weight basis, which is the same basis on which the respondents reported their FOPs. Furthermore, the Department finds the NSO data reliable because the NSO is an official source from the Philippines government. Record evidence indicates that official Philippine import statistics, including both NSO and GTA data, are collected at the 8-digit level. Therefore, based on the record evidence in this case, the Department has determined to use the 8-digit NSO data.[343] Accordingly, the Department continues to find Philippine NSO data the most reliable data on the record, and HTS 4408.90.90 the best information on the record for valuing respondents' NCNT core veneer inputs. Because we are continuing to use NSO data to value respondents' NCNT core veneer inputs, Layo Wood's arguments regarding the conversion of CIF and FOB costs are moot.

The Department disagrees with Layo Wood's argument that Petitioner's statements that lauan plywood is not suitable for core layers in multilayered wood flooring are reasons to not use Philippine HTS 4408.90.90. The Department notes that the GTA data show that there were no imports of lauan plywood under Philippine HTS 4408.90.90 during the POI. Accordingly, the Department finds no record evidence to indicate that Philippine HTS 4408.90.90 contains imports of materials not suitable for core veneer in the subject merchandise.

Layo Wood argues that the AUV for Philippines HTS 4408.90.90 is distorted by certain small-quantity shipments. Layo Wood provides a comparison of 2009 Philippines HTS 4408.90.90 and 2009 Philippine HTS 4408.90.90-06, claiming that allegedly high priced Singaporean imports under Philippine HTS 4408.90.90 indicate a distortion. Whether we agree with Layo Wood's assessment of the 2009 data is irrelevant, because the Department is using contemporaneous 2010 NSO data. Layo Wood additionally argues that certain imports under 2010 Philippine HTS 4408.90.90 are "not of commercial quantities." However, no record information exists to demonstrate that NCNT core veneer is not internationally traded in such quantities. Further, no corroborating record information exists to demonstrate that these import quantities are abnormally low.

Comment 17: Surrogate Value for NCNT Logs and Tropical Logs

- Petitioner contends that in the *Preliminary Determination*, the Department should not have valued NCNT wood logs and tropical wood logs under the Philippines HTS category 4403.99 ("Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared/ Other/ Other"). Petitioner states that, of the eight-digit HTS categories

[342] As noted in Surrogate Value Memorandum issued with the *Preliminary Determination*, the NSO is the primary statistical agency of the Philippine government and the NSO import statistics are compiled from copies of import documents submitted to the Philippines Bureau of Customs.
[343] *See* Re-filing of Post-Preliminary Surrogate Value Submission for the Samling Group, dated August 3, 2011, at Exhibit 1.

which make up HTS category 4403.99, the only imports into the Philippines during the POI were categorized under HTS code 4403.99.50 (Poles, piles and other wood in the round) and code 4403.99.90 ("Other"). Petitioner argues that the appropriate category with which to value respondents' log inputs is category 4403.99.30 ("Sawlogs and veneer logs"), since veneer logs are specifically identified in this category description. Petitioner claims that because no imports during the POI were classified under category 4403.99.30, the entire category 4403.99 is inappropriate to value NCNT wood logs and tropical wood logs. Petitioner further argues that category 4403.99 should not be used to value face veneer logs because they are more expensive than any other type of log included in this category. Instead, Petitioner argues that the Department should calculate weighted averages of each respondent's ME log purchases, and then value each respondent's NME log purchases using its ME purchase average.

- Yuhua states that the majority of logs entering the Philippines are categorized under HTS category 4403.99.90 ("Other"). Yuhua argues that this shows Philippines importers rarely use any other category to classify logs, and that it may in fact be importing veneer logs, but classifying them under category 4403.99.90 instead of category 4403.99.30. Yuhua argues that there is not enough evidence on the record to show that veneer logs are not included within HTS category 4403.99, and that HTS category 4403.99 represents the best information on the record from which to value logs. Yuhua additionally argues that the Department should not value NME-sourced logs using Yuhua's weighted average ME log purchases because the types of logs are too different.

- Layo Wood argues that the Department should continue to value its NCNT logs using HTS category 4403.99 since there were no imports under the more specific category of 4403.99.30 for either the POI or 2009. Layo Wood claims that Petitioner has not proven that the value used for HTS category 4403.99 is distorted or that price differences exist among its eight-digit subcategories, and that the value used in the *Preliminary Determination* for NCNT logs is, in fact, consistent with other international benchmark prices. Layo Wood suggests that, if the Department does not continue to rely upon HTS category 4403.99 to value NCNT logs, it instead use HTS category 4403.99.30 data from 2006, which is the most recent year for which imports into the Philippines were categorized under this HTS code.

Department's Position: For the final determination, the Department continues to find that the best available information with which to value both NCNT and tropical logs is the NSO data for HTS category 4403.99.

In accordance with section 773(c)(1) of the Act, when selecting the "best available information" for surrogate values, it is the Department's practice to select the most specific surrogate value while still capturing a broad, representative price for respondents' FOPs.[344] The Department considers several factors including whether the surrogate value is: publicly available, contemporaneous with the POI or POR, representative of a broad market average, chosen from

[344] *Taian Ziyang Food Company, Ltd. v. United States*, Slip Op. 11-88 (Ct. Int'l Trade July 22, 2011) at 62.

an approved surrogate country, tax and duty-exclusive, and specific to the input.[345] Additionally, the Department is given broad discretion to determine "best available information" in reasonable manner on case-by-case basis.[346]

The Department disagrees with Petitioner's recommendation that the Department value NME-purchased logs using the weighted average ME-purchased log prices of each respondent. The Department's policy provides a rebuttable presumption that if a respondent company "purchases at least thirty-three percent of a given input from ME suppliers, Commerce will use the weighted-average price of those ME purchases (rather than a surrogate value) to value the remainder of the input purchased from NME suppliers."[347] However, the Department does not agree that it should apply this thirty-three percent threshold across all types of logs together, as it would essentially result in treating all separate species of logs as a single log input. In reality, each log species is considered to be a different input, just as each sawn wood species and each veneer species is considered to be a different input. For example, wood species is included among the CONNUM characteristics,[348] each respondent reported different types of wood as FOPs, [349] and each respondent separately listed the different species of logs, sawn wood, and veneer in its surrogate value submissions.[350] The Department finds that it would be inaccurate to value one input, (*e.g.*, oak logs), with the ME purchase price of an entirely different input, (*e.g.*, mahogany logs), merely because total ME purchases across all types of logs exceeded thirty-three percent of total log purchases. Therefore, the Department has continued to follow its above-stated policy for valuing an individual input using ME purchase prices when the ME purchases are at least thirty-three percent of that input, but has not extended this policy to apply to a group of inputs as a whole (*i.e.*, logs).

The Department finds that the NSO value for HTS category 4403.99 continues to be the best available surrogate value for NCNT and tropical logs in the present case. This value is contemporaneous with the POI and tax and duty-exclusive.[351] Unlike Petitioner's ME-price-based suggestion, above, HTS category 4403.99 is also publicly available and represents a broad market average from the primary surrogate country. Because the Department has no surrogate value data reported in narrow enough categories to permit valuation of each input with its own exact wood species surrogate value, the best alternative is to use a surrogate value which, like the combination of inputs it is used to value, is likely to include a representative range of wood species. The Department finds this method to be more specific to the input than Petitioner's ME

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[345] *See, e.g., First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 75 FR 64695 (October 20, 2010) and accompanying IDM at Comment 3; *Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011) and accompanying IDM at Comment 4.
[346] *See* sections 773(c)(1) and (4) of the Act; *Timken Co. v. United States*, 201 F.Supp.2d 1316, 1321 (CIT 2002).
[347] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-8 (October 19, 2006).
[348] *See* Antidumping Investigation of Multilayered Wood Flooring from the People's Republic of China: Antidumping Questionnaire, dated January 10, 2011, at Field Number 3.1.
[349] *See* Layo Wood's Section C and D Questionnaire Responses, dated February 23, 2011; the Samling Group's Section C and D Questionnaire Responses, dated March 1, 2011; Yuhua's Section C and D Questionnaire Responses, dated February 22, 2011.
[350] *See* Layo Wood's Surrogate Value Submission, dated March 15, 2011, at Exhibit 5; the Samling Group's Surrogate Value Submission, dated March 15, 2011, at Exhibit 1; Yuhua's Surrogate Value Rebuttal Submission, dated March 21, 2011, at Exhibit 4.
[351] *See* Prelim SV Memo at 2.

purchase suggestion, above. With Petitioner's suggestion, the Department would be using the prices of only a select few species of logs (*i.e.*, ME-purchased logs) to value the respondents' NME-purchased logs, which are of different species, with no overlap between ME-purchased species and NME-purchased species. Therefore, although the HTS category 4403.99 contains many different log species, the surrogate value is more likely to include the correct wood species for the input than is an ME purchase price of logs known to be of entirely different species from the NME-purchased logs.

While the arguably more specific eight-digit HTS category 4403.99.30 ("sawlogs and veneer logs") exists as a subheading under category 4403.99, record evidence shows that no imports were classified under this subheading for either the POI or 2009.[352] Layo Wood argued that the Department should continue using HTS category 4403.99, but argued in the alternative that it should use HTS category 4403.99.30 data from 2006, which is the most recent year that imports were categorized under this HTS code. The Department finds that the broader six-digit HTS category 4403.99 is preferable to the 2006 HTS category 4403.99.30 data because the former is contemporaneous with the POI and does not require inflation. Additionally, the Department notes that HTS category 4403.99 also encompasses subheadings 4403.99.50 ("poles, piles, and other wood in the round") and 4403.99.90 ("other"), and that Petitioner has not provided convincing evidence that the types of logs classifiable within these HTS subcategories could *not* be used by respondents. Within the HTS category 4403.99 ("Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared/ Other/ Other"), the Departments finds it reasonable that the respondents could be using types of wood logs identifiable under either of these two subcategories, especially in light of Yuhua's observation that the vast majority of imports under Philippine HTS category 4403.99 are classified as 4403.99.90 ("other").[353]

Based on the above considerations, the Department finds that it is most appropriate to continue using Philippine HTS category 4403.99 data for the POI to value NCNT and tropical logs.

Comment 18: Domestic Truck Rate

- Petitioner argues that the Department should use its calculated surrogate truck freight rate data from the Philippines, which is based on rate information from the Confederation of Truckers Association of the Philippines, Inc. ("CTAP") for 92 destinations within the Philippines, and the driving distances to these 92 destinations.[354] Because these truck rate data are from 2011, Petitioner provided an article from January 2011, which indicated that CTAP members had approved a 20-percent rate increase.[355] Therefore, Petitioner adjusted the 2011 rates downward by 20 percent. With this adjustment, Petitioner contends that these adjusted truck rates were the rates in effect for 2010, which covers the POI.[356] Also, Petitioner argues that the truck freight rate from another source, *Doing Business in the Philippines province of Camarines Sur*, should not be used because it only includes data for one truck route and is not contemporaneous with the POI.

[352] *See* Prelim SV Memo at Exhibit 1, and related electronic public disclosure materials (Public\NSO Data\Raw Data from NSO\POI and 2009).
[353] *See id.*, at Exhibit 1, and related electronic public disclosure materials (Public\NSO Data\Raw Data from NSO\Original All AUV.xls); *see also* Yuhua's Rebuttal Brief, dated August 9, 2011, at 6-7.
[354] *See* Exhibit 26 of *Petitioner's August 3, 2011 SV submission*, which was originally filed on July 5, 2011.
[355] *Id*. at Exhibit 28.
[356] *Id*. at Exhibits 27 and 28.

- The Samling Group agrees with Petitioner.

- Layo Wood argues that the Petitioner's proposed surrogate truck calculations, which are based on Philippines CTAP truck rates, use straight-line (flying) distances and not actual travel distances. Layo Wood states that its reported inland freight truck distances are actual road distances rather than straight-line distances. Layo Wood states that the Department improperly rejected rebuttal information it placed on the record which addressed the reliability of Petitioner's truck rate data information. Layo Wood argues that the Department should continue to use the Indian truck freight data used in the *Preliminary Determination*. Alternatively, the Department should use the truck freight rate data from *Doing Business in the Philippines province of Camarines Sur*.

Department's Position: For the final determination, the Department has determined that the CTAP Philippines truck rate data are the best available information on the record for valuing domestic truck rates. When valuing the FOP, "it is the Department's stated practice to use investigation or review period-wide averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data."[357] The Department has selected the CTAP truck data set because it is from the primary surrogate country, the Philippines, and is an average for 92 destinations in the Philippines. Based on the record evidence of the January 2011 article, the 2011 CTAP rates were 20 percent higher than the 2010 CTAP rates.[358] Normally, in this instance, to inflate or deflate the 2011 CTAP surrogate value, the Department would use the International Monetary Fund's Producer Price Index ("PPI") for the Philippines. However, because this article is specific to truck rates issued by CTAP, the Department determines that the CTAP percentage rate change is more appropriate than the WPI percentage change. Therefore, the Department used the Petitioner's calculations that adjusted CTAP 2011 rates by 20 percent to calculate the 2010 domestic truck rates.

Although the Indian truck rate data are contemporaneous to the POI and also have multiple destinations, the Department determines not to use those data because India is not the Department's primary surrogate country. When the Department has comparable surrogate value data from several potential surrogate countries, the Department's preference is to use the surrogate value from the primary surrogate country.[359] The Department normally values all factors from a single surrogate country and will resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[360] In this instance, the

[357] *See Policy Bulletin 04.1* at 4.
[358] *See* Exhibit 28 of *Petitioner's August 3, 2011 SV submission.*
[359] *See Folding Metal Tables and Chairs From the People's Republic of China: Final Results of 2007-2008 Deferred Antidumping Duty Administrative Review and Final Results of 2008-2009 Antidumping Duty Administrative Review*, 76 FR 2883 (January 18, 2011) and accompanying IDM at Comment 1.
[360] *See* 19 CFR § 351.408(c)(2); *see also id* ; *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002) and accompanying IDM at Comment 9.

Department determines that the CTAP truck data from the Philippines are reliable, specific to the freight expenses to be valued, are tax-exclusive, and are public information.

The Department disagrees with Layo Wood that the distances used in Petitioner's truck rate calculations were for straight-line distances (flying or air distance). Petitioner used the estimated travel/road distances to determine the distances between different destinations. These distances were then used to calculate the average truck rates.[361] For example, the first distance listed between Manila South Harbor and Intramuros is the travel distance, which is estimated at 2.91 km to 3.16 km.[362] The straight-line distance is 2.53 km.[363] In addition, the Department compared the distances for different destinations in Exhibits 27 and 28 of Petitioner's August 3, 2011, surrogate value submission, and found the distances listed for the domestic truck rates were the travel/road distances.

The other Philippine source truck data from *Doing Business in the Philippines province of Camarines Sur*[364] reflect only one route (Naga to Manila). The Department therefore found that these data are not as representative of a broad market average as the CTAP truck data, which include 92 destinations.

For the Department's response to rejecting new information in Layo Wood's rebuttal surrogate value submission, please see Comment 3.

Comment 19: Surrogate Value for Paint Inputs – the Samling Group and Layo Wood

- The Samling Group suggests that the Department value Samling's finish inputs (*i.e.*, top coat and base coat) using HTS subcategory 3208.20.90. In particular, the Samling Group contends that the broad six-digit HTS category used for the *Preliminary Determination* (*i.e.*, 3208.20) contains paint products not used in the Samling Group's production of subject merchandise; thus, the eight-digit HTS subcategory 3208.20.90 is more specific to the Samling Group's finish inputs.

- Conversely, Petitioner argues that the Department should continue to value the Samling Group's finish (top coat and base coat) inputs using HTS category 3208.20 for the final determination. Petitioner contends that there is no record evidence to support the Samling Group's assertion that HTS subcategory 3208.20.90 is more specific to Samling's finish inputs than HTS category 3208.20.

- Layo Wood argues that the Department should value its paint inputs using HTS subcategory 3208.20.90 rather than HTS category 3208.10, which was used in the *Preliminary Determination*. Specifically, Layo Wood argues that the Department verified that the paint consumed by Layo Wood was based on acrylic ester; thus, the eight-digit HTS subcategory 3208.20.90 (which is for paint "based on acrylic and vinyl polymers, other") is more specific to Layo Wood's paint inputs.

[361] *See* Exhibit 27 and 28 of *Petitioner's August 3, 2011 SV submission.*
[362] *Id.* at Exhibit 27.
[363] *Id.*
[364] *See* Prelim SV Memorandum at Exhibit 3.

- Petitioner contends that if the Department determines that it is appropriate to change the classification for Layo Wood's paint input from HTS category 3208.10 to HTS category 3208.20 based on verification findings, then it should value Layo Wood's paint input using the six-digit HTS category 3208.20 and not the eight-digit HTS category 3208.20.90. Specifically, Petitioner argues that Layo Wood has provided no evidence that HTS subcategory 3208.20.90 is the only eight-digit subheading within HTS category 3208.20 in which Layo Wood's paint inputs could be classified.

Department's Position: For the final determination, the Department is valuing the Samling Group's finish inputs (*i.e.*, top coat and base coat) and Layo Wood's paint inputs using POI NSO data from the eight-digit Philippine HTS category 3208.20.90. For an explanation of the Department's practice regarding surrogate value selection, *see* Comment 13: Surrogate Value for Plywood, *supra*.

First, the Department agrees with Layo Wood's assertion that based on verification findings, HTS category 3208.20, rather than HTS category 3208.10, is the correct six-digit classification for Layo Woods' paint inputs.[365] In particular, HTS category 3208.20, which is for paint "based on acrylic and vinyl polymers," is specific to Layo Wood's paint inputs because Layo Wood uses acrylic-based paint in the production of subject merchandise.[366] Conversely, HTS category 3208.10 covers paints "Based on polyesters," which are not used by Layo Wood in the productions of subject merchandise.[367]

Next, the Department agrees with the Samling Group's and Layo Wood's assertions that the Philippine HTS subcategory 3208.20.90 is more specific to their finish and paint inputs, respectively, than the broader HTS category 3208.20. The six-digit Philippine HTS category 3208.20 contains seven subcategories: (1) HTS subcategories 3208.20.11 and 3208.20.19, covering "Varnishes (including lacquers), exceeding 100°C heat resistance," "for dental use" and "other," respectively; (2) HTS subcategories 3208.20.21 and 3208.20.29, covering "Varnishes (including lacquers), not exceeding 100°C heat resistance," "for dental use" and "other," respectively; (3) HTS subcategory 3208.20.30, covering "Enamels;" (4) HTS subcategory 3208.20.40, covering "Anti-fouling or anti-corrosive paints for ships' hulls;" (5) HTS subcategory 3208.20.50, covering "Undercoats and priming paints;" (6) HTS subcategories 3208.20.61 and 3208.20.69, covering "Other paints, containing insecticide derivatives and other;" and (7) HTS subcategory 3208.20.90, covering "other" varnishes and paints not elsewhere specified.[368] In the instant case, the record lacks specific evidence to suggest that Samling's or Layo Wood's finish and paint inputs can be classified under any one the first six subcategories identified above. Thus, the broader six-digit HTS category 3208.20 clearly contains paints that are not of the type used by Samling or Layo Wood.

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[365] *See* Memorandum Regarding: Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China, dated July 22, 2011, at 46 and Exhibit 29.
[366] *Id.*
[367] *See, e.g., id.*
[368] *See* Petitioner' Post-Preliminary Surrogate Value Re-Submission, dated August 3, 2011, at Exhibit 24.

Moreover, it should be noted that in its Preliminary Surrogate Value submission, the Samling Group stated that its finish inputs (*i.e.*, top coat and base coat) are properly classified under the eight-digit Indonesian HTS category 3208.20.90, "based on acrylic and vinyl polymers – other."[369] Similarly, in Petitioner's April 6, 2011, Preliminary Surrogate Value Rebuttal submission, Petitioner suggested that the eight-digit Indonesian HTS category 3208.20.90, "other," was the correct category for valuing the Samling Group's finish inputs (*i.e.*, top coat and base coat).[370] Therefore, for the *Preliminary Determination*, the Samling Group and Petitioner agreed that HTS category 3208.20.90, "other," was the correct eight-digit category within the broader six-digit HTS category 3208.20, "based on acrylic and vinyl polymers," for valuing Samling's finish inputs. While the Department recognizes that Samling's and Petitioner's preliminary suggestions were based on Indonesian HTS categories, similar to the Philippines HTS categories, the six-digit Indonesian HTS category 3208.20 also contains eight-digit subcategories such as paints "for dental use" and "anti-fouling or anti-corrosive paints for ships' hulls."[371] Thus, based on Samling's and Petitioner agreed upon preliminary surrogate value suggestions for valuing finish and paint inputs, and because the Department lacks information to specifically classify Samling's or Layo Wood's paint inputs into one of the specific eight-digit Philippine HTS subcategories identified above, the Department finds that the eight-digit HTS subcategory 3208.20.90, covering "other" varnishes and paints not elsewhere specified, is the most appropriate HTS category for valuing Samling's and Layo Wood's finish and paint inputs for the final determination.

Comment 20: Surrogate Value for HDF

- Layo Wood argues that Philippine HTS 4411.19, which the Department used in the *Preliminary Determination* to value HDF, is incorrect. Layo Wood argues that the Department should use Philippine HTS 4411.11 instead because the fiberboard Layo Wood uses in the production of the subject merchandise is not "worked or covered." Layo Wood argues that the import categories for fiberboard do not distinguish between "high," "medium" or "low" density fiberboard, but rather lists densities as a range. Layo Wood emphasizes that the terms "MDF" and "HDF" are general descriptions, and not concrete definitions.

- Petitioner argues that the use of Philippine HTS 4411.11 would capture the midpoint of Layo Wood's fiberboard densities, but would not capture the range of densities. Accordingly, Petitioner argues that an average of Philippine HTS 4411.11 and Philippine HTS 4411.21 would capture the range of densities Layo Wood has claimed exist in its fiberboard.

Department Position: It is the Department's practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[372] We agree with Layo

[369] *See* Samling's Surrogate Value Submission, dated March 15, 2011, at Exhibit 1; *see also* Petitioner' Preliminary Surrogate Value Rebuttal, dated April 6, 2011 ("Petitioner's April 6, 2011, Submission"), at Exhibit 12.
[370] *See* Petitioner' April 6, 2011, Submission at Exhibit 7.
[371] *Id*. at Exhibit 12.
[372] *See LTP* and accompanying IDM at Comment 9.

Wood that, as Philippine HTS 4411.19 includes fiberboard that is worked or covered, it offers a less product-specific surrogate value than Philippine HTS 4411.11. However we disagree with Layo Wood's argument that Philippine HTS 4411.11 alone would adequately apply to all of Layo Wood's HDF inputs. Philippine HTS 4411.11 applies to imports of fiberboard with a density greater than 0.8 g/cm^3 (or 800 kg/m^3).[373] Philippine HTS 4411.21 applies to imports of fiberboard with densities ranging from 500 kg/m^3 to 800 kg/m^3.[374] Layo Wood has stated throughout the proceeding that it uses fiberboard with densities ranging from 760 kg/m^3 to 880 kg/m^3.[375] Outside of this range, there is no record information to indicate what percentage of Layo Wood's fiberboard had which densities. Accordingly, we find the most representative surrogate value on the record to be a simple average of the AUVs provided from Philippine HTS 4411.11 and 4411.21.

Mandatory Respondent Specific Issues

Yuhua

Comment 21: Yuhua Affiliation

- Yuhua maintains that the Department should find that it is affiliated with its reselling companies, and that the Department should, therefore, calculate Yuhua's antidumping duty margin based on the sales from the resellers to the U.S. customer, rather than the sales from Yuhua to the resellers.[376] Yuhua contends that it has established sufficient evidence of reliance and control for a determination of affiliation pursuant to section 771(33)(G) of the Act, as well as evidence of affiliation based on an employer-employee relationship pursuant to section 771(33)(D) of the Act.[377]

- Petitioner argues that the Department should affirm its *Preliminary Determination* finding that Yuhua is not affiliated with its resellers.[378] Petitioner further argues that the employer-employee relationship in *PET Film/India*, cited by Yuhua, is materially different from Yuhua's and the resellers' relationship, and, therefore, that the Department cannot rely upon it.[379]

Department's Position: For the final determination, the Department continues to find that Yuhua has not provided sufficient record evidence of affiliation with its resellers for the Department to consider them affiliated for purposes of calculating an antidumping duty margin.

[373] *See* Prelim SV Memo at Exhibit 1.
[374] *See id.*
[375] *See* Layo Wood's Case Brief, dated August 24, 2011, at 27.
[376] *See* Yuhua's Case Brief, dated August 4, 2011, at 4-11 (citing *Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review*, 70 FR 8072 (Feb. 17, 2005).
[377] *See id.*
[378] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at 40-41.
[379] *See id.*

To determine whether affiliation between persons exists, the Department relies upon section 771(33) of the Act, which states that the Department considers the following to be affiliated:

> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
>
> (B) Any officer or director of an organization and such organization.
>
> (C) Partners.
>
> (D) Employer and employee.
>
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
>
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
>
> (G) Any person who controls any other person and such other person.
>
> For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

As the Department stated in its Yuhua Affiliation Memo,[380] control between persons may exist in close supplier relationships in which either party becomes reliant upon the other.[381] With respect to close supplier relationships, the Department has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.[382] Only if such reliance exists does the Department then determine whether one of the parties is in a position to exercise restraint or direction over the other.[383]

The Department disagrees with Yuhua that it is affiliated with its resellers based on section 771(33)(G) of the Act. The Department does not dispute that a close supplier relationship may exist between Yuhua and the reselling companies, but it has not found sufficient evidence that the parties have become reliant upon one another. One reason Yuhua argues that it and the reselling companies are reliant upon each other is because the United States is Yuhua's most important market.[384] The Department does not disagree that the United States appears to be a significant multilayered wood flooring market for Yuhua. However, the fact that the companies can and do sell other products in other markets indicates that their reliance upon one another is not sufficient for the Department to find affiliation. Additionally, Yuhua argues that the parties'

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[380] *See* Yuhua Affiliation Memo at 2-3.
[381] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994) at 838; *see also Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 59739, 59739-59740 (October 11, 2006), unchanged in *Stainless Steel Wire Rod.*
[382] *See id.; TIJID*, 366 F. Supp. 2d 1286, 1295-1300 (CIT 2005) .
[383] *See Catfish Farmers of Am.* v. *United States*, 641 F. Supp. 2d 1362, 1373-74 (ClT 2009); *TIJID*,.366 F. Supp. 2d at 1295-1300; *Carbon Steel Flat Products*, 62 FR 18404 (April 15, 1997), and accompanying IDM at Comment 2
[384] *See* Yuhua's Case Brief, dated August 4, 2011, at 6-8.

ability to terminate the contractual sales agreement does not disprove reliance, as the agreement has been ongoing since 2006, and was not, in fact, terminated by either party during that time.[385] However, the two appointment agreements provided by Yuhua established that the agreements were only valid for two and three years, respectively, after which the agreements specified that they would terminate with an option for renewal.[386] Furthermore, the agreements state that renewal was conditioned upon the reselling companies meeting a target value of sales, and that if the target was not met, Yuhua could terminate the agreement.[387] The Department finds that Yuhua's apparent willingness to discontinue its appointment agreements with the reselling companies if they did not meet stated sales goals suggests that they were not sufficiently reliant upon each other to support a finding of affiliation.

Even if the Department found sufficient evidence of reliance between Yuhua and the reselling companies, it must then find that either Yuhua or the reselling companies could exercise restraint or direction over the other as a result of their close supplier relationship.[388] Yuhua argues that record evidence supports a finding that Yuhua has the ability to exercise restraint or direction over the reselling companies and that, therefore, the Department should find the parties affiliated. The Department disagrees. A detailed analysis of Yuhua's ability to exercise restraint or direction over the reselling company, including business proprietary information, is included in the Yuhua Final Analysis Memo.[389]

As explained further in the Yuhua Final Analysis Memo, the Department also disagrees with Yuhua's interpretation of the Yuhua Affiliation Memo when Yuhua describes the Department's conclusion in the *Preliminary Determination* regarding the reselling companies' ownership.[390] Furthermore, the Department disagrees with Yuhua's reliance on *PET Film/India* in arguing that Yuhua and the reselling companies are affiliated pursuant to section 771(33)(D) of the Act.[391] The Department does not dispute that employers and employees are affiliated parties, as provided by section 771(33)(D) of the Act. However, the facts of *PET Film/India* are distinguished from the present case based on the nature of the relationship between the individual and the respondent company.

Layo Wood

Comment 22: Layo Wood-Jiaxing Brilliant Affiliation

- Petitioner argues that the Department should find Layo Wood and Jiaxing Brilliant to be a single entity because of shared control and intertwined operations.

- Layo Wood states that the Department has found various instances of overlapping ownership between Layo Wood and Jiaxing Brilliant, but no instances of control between the two.

[385] *See id.* at 7-8.
[386] *See* Yuhua's January 31, 2011, submission at Exhibit A-l0; Yuhua's March 7, 2011, submission at Exhibit SA-1.
[387] *See id.*
[388] *See* Yuhua Affiliation Memo at 4-6.
[389] *See* Final Determination Analysis Memo of Zhejiang Yuhua Timber Co., Ltd., dated October 11, 2011.
[390] *See* Yuhua's Case Brief, dated August 4, 2011, at 5, 10; *see also* Final Determination Analysis Memo of Zhejiang Yuhua Timber Co., Ltd., dated October 11, 2011.
[391] *See* Yuhua's Case Brief, dated August 4, 2011, at 9-11.

Department Position: We agree with Layo Wood. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships.[392] The Department will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[393] Petitioner restates the facts of the case as described in Layo Wood's January 31, 2011, response to Section A of the Department's original questionnaire, and the preliminary affiliation memorandum regarding Layo Wood.[394] Petitioner emphasizes that Jiaxing Brilliant and Layo Wood's operations are "intertwined." However, Layo Wood accurately states that this fact alone does not constitute "substantial control" of one company by the other, given the ownership pattern discussed above and at length in the Layo Wood Prelim Affiliation Memo. As the record fails to indicate any instance of control by a single actor or family group of both Layo Wood and Jiaxing Brilliant, the Department continues to find the two companies are not affiliated for the purposes of this investigation.

Further analysis of proprietary information regarding this issue is available in Layo Wood's Final Analysis Memo.[395]

Comment 23: Whether the Wood Scrap Offset for Layo Wood Should be Denied

- Citing *Magnesium/China (December 16, 2008*) and accompanying IDM at Comment 8, Petitioner claims that the Department's practice with regard to granting scrap offsets requires a respondent to substantiate the quantity of scrap produced from subject merchandise during the POI and to provide evidence that the scrap was sold. While Layo Wood provided POI sales invoices proving the latter requirement, Petitioner argues that the company failed to substantiate that the quantity of scrap sold is in any way consistent with the quantity of subject merchandise produced during the POI; therefore, according to Petitioner, the company's claimed offset must be denied.

- Petitioner also contends that Layo Wood failed to allocate its POI scrap sales between subject and non-subject merchandise, thus significantly overstating its claimed offset. In support of this contention, Petitioner points to the quantity of face veneer that was sold during the POI, yet, according to Petitioner, Layo Wood failed to allocate any of the scrap offset to its face veneer production. Petitioner argues that under similar circumstances in *Arch Chemicals* the CIT disagreed with the Department's decision to grant an offset where both subject and non-subject products produced the scrap in

[392] *See* 19 CFR § 351.102(b)(3).
[393] *See id.*
[394] *See* Layo Prelim Affiliation Memorandum.
[395] *See* Final Determination Analysis Memo of Zhejiang Layo Wood Industry Co., Ltd., dated October 11, 2011.

question. As such, Petitioner concludes that Layo Wood's claimed scrap offset must be denied.

- Layo Wood argues that contrary to Petitioner's allegations, the Department does not require a direct link of scrap generation to POI production for a company to take a scrap offset. Instead, Layo Wood contends that the Department's well established practice is to grant scrap offsets for scrap sold in the POI.

- Layo Wood also contests Petitioner's conjecture that the scrap offset was allocated to subject merchandise only. While acknowledging that at verification the Department discovered that parquet flooring was omitted from the denominator in the scrap offset calculation, Layo Wood states that in accordance with the Department's instructions, a revised database was submitted that corrects for this omission. With this correction, Layo Wood submits that the scrap that was sold was allocated to all products, subject and non-subject, that were responsible for the scrap produced.

- Finally, Layo Wood tenders that Petitioner's cite to *Arch Chemical* is not analogous, as the scrap offset that was ultimately denied in that case was completely related to non-subject merchandise.

Department's Position: The Department disagrees with Petitioner's assertion that Layo Wood's scrap offsets should be denied for the final determination. While not specifically articulated in the statute or in the Department's regulations, it is the Department's practice to allow respondents an offset to the reported FOPs for scrap generated during the production of the merchandise under consideration if evidence is provided that such scrap has commercial value.[396] In the instant case, the record evidence supports that Layo Wood's claimed scrap offsets were related to the production of the merchandise under consideration (*i.e.*, the quantity claimed was demonstrated to be from production during the period) and that the types of scrap claimed as an offset have commercial value.

At verification, the Department observed the types of scrap that were generated during Layo Wood's production of subject and non-subject merchandise. Based on our observations during verification and our review of sales documentation, the Department confirmed that the scrap generated was either burned for fuel or sold to third parties.[397] The Department notes that an offset was not claimed for the scrap burned for fuel, but only for the scrap that was sold.[398] With regard to the types of scrap that Layo Wood claimed as an offset to the production costs for subject merchandise, *i.e.*, wood powder scrap, wood strip scrap, and wood flooring scrap, the Department noted that "wood powder scrap was generated and collected during the profiling process, while wood strips, mostly composed of plywood core and back layer wood sheets, were

[396] *See, e.g., Ribbons/China* (*July 19, 2010)* and accompanying IDM at Comment 2; *Mushrooms/China* (*July 21, 2005)* at 42034.
[397] *See* Layo Wood Verification Report at 15. We note that while the referenced topic was bracketed in the verification report, the information has since been reported without brackets in Layo Wood's Rebuttal Brief, dated August 9, 2011, at 22.
[398] *See* Layo Wood Verification Report at 56-57.

generated during the cutting process."[399] The Department's verification report also confirms that these processes take place in the wood flooring workshop which encompasses the production of subject merchandise, as opposed to the wholly non-subject merchandise workshops for face veneer and plywood production.[400] While both face veneer and plywood are consumed in the production of the subject merchandise, Layo Wood also sold these intermediary non-subject inputs during the POI.[401] Consequently, we agree with Petitioner that the face veneer and plywood that was sold rather than consumed in the production of subject merchandise should be allocated based on the portion of the offset related to scrap produced and sold from those workshops. However, based on our observations and review of sales documentation, we found that the types of scrap that were sold were generated only in the flooring workshop, not in the face veneer or plywood workshops.[402] Hence, the Department finds that the reported scrap offsets, as adjusted to include the Department's verification findings,[403] are appropriately allocated to the all of the subject and non-subject products manufactured in Layo Wood's wood flooring workshop during the POI. Specifically, the wood powder, wood strip and wood flooring scrap offset FOPs were calculated by dividing the total quantity of wood powder, wood strip, and wood flooring scrap offsets (*i.e.*, only the portion of scrap that was sold) by the total quantity of subject and non-subject products that were produced in the wood flooring workshop during the POI.[404]

The Department finds Petitioner's reliance on *Magnesium/China (December 16, 2008)* and accompanying IDM at Comment 8 as a basis to deny Layo Wood's claimed scrap offsets is unpersuasive. The concern in that case was the lack of a complete record and, in particular, the respondent's failure to fully respond to the Department's specific questions with regard to byproduct offsets.[405] The Department ultimately granted the respondent an offset, but only for the byproduct sales that were supported with sales documentation.[406] Here, Layo Wood has been fully responsive to our questions with regard to scrap and has provided all requested documentation available in its normal books. At verification, the Department confirmed that Layo Wood neither tracks nor inventories scrap production.[407] While the company's only record of scrap quantities is its sales documentation, the information provided by Layo Wood shows that a quantity of salable wood scrap is generated and sold monthly by the company.[408] At Exhibit SQ2-39 of Layo Wood's April 7, 2010, submission, the company provided the quantities of scrap sold for each month of calendar year 2010.[409] Additionally, the Department observed

[399] *See* Layo Wood Verification Report at 15.
[400] *Id.*
[401] *See* Layo Wood Verification Report at 30.
[402] *See* Layo Wood did not claim an offset for scrap that was used as fuel.
[403] At verification the Department found that Layo Wood had mistakenly omitted parquet wood flooring (subject merchandise not sold in the United States) from the denominators of the scrap offset FOP calculations. *See* Layo Wood Verification Report at 57. In a letter dated July 22, 2011, the Department requested a new database from Layo Wood which incorporated this adjustment to the scrap offset FOPs. *See* Letter Regarding: Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Request for Post Verification Data Revision, dated July 22, 2011 at Attachment 1. The requested database was submitted by Layo Wood on July 26, 2011.
[404] *Id.*
[405] *See Magnesium/China* (*December 16, 2008)* and accompanying IDM at Comment 8.
[406] *Id.*
[407] *See* Layo Wood Verification Report at 15.
[408] *See* Layo Wood Verification Report at 56-57.
[409] *See* Layo Wood's Second Supplemental Questionnaire Response dated April 7, 2011, at Exhibit SQ2-39.

the generation and storage of scrap in Layo Wood's various workshops and examined the POI sales documentation noting the types and quantities of scrap that were sold.[410] Based on these procedures, the Department finds that Layo Wood has provided adequate support for its claimed scrap offsets. As a result, we have granted the requested scrap offsets, as amended for the verification findings, in the final determination.

Finally, while Petitioner proffers *Arch Chemicals* as support for denying Layo Wood's scrap offsets, the Department finds the case is not directly on point. In *Arch Chemicals*, the CIT concluded that the respondent was not entitled to the offset since the byproduct in question was "discharged at a production stage that resulted solely in the production of non-subject merchandise."[411] Here, the scrap offsets claimed by Layo Wood were generated in the wood flooring workshop where both subject and non-subject products were manufactured. [412] Accordingly, Layo Wood has allocated the scrap offsets to all products, both subject and non-subject, that were manufactured in the wood flooring workshop during the POI.

Comment 24: Surrogate Value for Layo Wood's Byproducts

- Petitioner states that Philippine HTS 4401.30, which was used by the Department in the preliminary determination, is inappropriate because the value is higher than the SV of veneer, logs and sawn wood.[413] Petitioner argues that Philippine imports under HTS 4401.30, which primarily come from Germany, are actually pharmaceutical products, and not wood waste and scrap. Petitioner further submits that Philippine HTS 4401.22 is inappropriate because the description relates to wood chips, not necessarily scrap or particles. Petitioner argues in favor of the following surrogate values as alternatives: 1) a domestic price quote from a Philippines publication stating that wood chip prices in the Philippines were $10/ton; 2) import statistics for HTS 4401.30 from Thailand; 3) a study comparing Indian sawdust prices of lignite to Indian prices of sawdust during the POI. Petitioner claims these prices are corroborated by data from the U.S. state of Indiana's wood industry.

- Layo Wood argues that Philippine HTS 4401.30 is the appropriate surrogate value for Layo Wood's byproducts.[414] First, Layo argues that HTS 4401.30 includes a description of Layo Wood's byproducts. Second, Layo Wood points to recent antidumping cases in which this category was used to value sawdust and wood chips. Layo Wood argues that the German company from which the Philippines imported products under Philippines HTS 4401.30 makes a variety of products, including wood-based products and, thus, it is reasonable to suppose that they also generate wood scrap. Layo Wood argues that domestic Philippine price information supplied by Petitioner is not broadly representative and is not specific to Layo Wood's particular inputs. Layo Wood further argues that the Thai and Indian import data for HTS 4401.30 proposed by Petitioner are not suitable, as Thailand and India are not the primary surrogate country, and are no more or less accurate than Philippine HTS 4401.30. Layo Wood further

[410] *See* Layo Wood Verification Report at 56-57.
[411] *See Arch Chemicals*, Slip Op. 11-41 at 9.
[412] *See* Layo Wood Verification Report at 15.
[413] Petitioner cites *Steel Nails* (June 16, 2008) and accompanying IDM at Comment 12.
[414] *See* Layo Wood's Rebuttal Brief, dated August 9, 2011, at 16.

argues that, should the Department decide that Philippine HTS 4401.30 is not a suitable SV source, the Department should use facts available to value Layo Wood's scrap with the Philippine surrogate value for core sheets.

Department Position:

The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[415] When doing this, the Department's practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[416] For purposes of this final determination, the Department has valued Layo Wood's byproducts using a simple average of the surrogate values for Layo Wood's wood veneer and wood core inputs.

As explained in *Steel Nails* and argued by Petitioner, the Department has found in past cases that it may disregard a surrogate value when it is clear that the selection of that surrogate value would yield an unreasonable result. The facts of this case closely match those of *Steel Nails*, in that the AUV of Philippine HTS 4401.30 would be higher than the surrogate values used for Layo Wood's log, veneer and core inputs. All parties, including the Petitioner, acknowledge that HTS 4401.30 offers the most specific description of Layo Wood's byproducts.[417] While we agree that the HTS description provided by Philippine HTS 4401.30 includes the terms "sawdust" and "scrap," the HTS description is not the only relevant factor for the Department to consider.[418] In this case, as was the case in *Steel Nails*, we find that the valuation of a scrap byproduct with a surrogate value higher than the substantive inputs into that scrap product would produce an unreasonable result not explained by the record. Consequently, we have valued Layo Wood's byproducts using a simple average of the surrogate values for Layo Wood's wood veneer and wood core inputs.

While in *Citric Acid* the Department chose to value scrap hi-protein corn with a surrogate value higher than that of some of the inputs in that case, *Citric Acid* differs from the instant case. In *Citric Acid*, the high-protein corn by-product was generated as a result of a process that includes

[415] *See LTP* and accompanying IDM at Comment 9.
[416] *See id.*
[417] *See* Petitioner's Case Brief, dated August 4, 2011, at 32-33 ("Thus, because subheading 4401.30 is specific to wood waste and scrap, including sawdust, and because Layo {Wood}'s byproducts consist exclusively of wood scrap, including wood powder (which we submit is comparable to if not identical to sawdust), of a type specifically described in the *Explanatory Notes*, subheading 4401.30 is the appropriate classification for a surrogate value for Layo {Wood}'s byproduct.").
[418] *See Steel Nails* at Comment 12. Petitioner also argues that the AUVs for Philippine imports under HTS 4401.30 are aberrational. The Department does not find that the Petitioner has met its burden for showing the data to be aberrational in this case because the existsence of higher prices alone does not necessarily indicate the price data are distorted or misrepresentative. *See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010), and unpublished IDM at Comment 3. The Philippine AUV is within the range of AUVs for HTS 4401.30 for countries economically comparable to the PRC during the POI. *See* Letter from Layo Wood regarding Comment for Preliminary Determination, dated May 3, 2011, at Exhibit 8. Instead, the Department has determined not to use HTS 4401.30 because it would produce unreasonable results (*i.e.*, a higher value for the scrap than the value of several of the inputs from which the scrap is generated).

not only corn as an input, but corn enzyme, sodium carbonate, sodium hydroxide, and steam. Therefore, the SV for the high-protein corn by-product generated as a result of this process includes the values of those inputs and the overhead costs associated with processing them.[419] In this case, there are no additional inputs involved, and no such further processing occurs with regard to the generation of Layo Wood's scrap wood powder, scrap floor and wood scrap. Accordingly the Department does not find the *Citric Acid* decision as instructive here.

Petitioner claims that evidence from the Philippines' Bureau of Import Services indicates that certain pharmaceutical products entered into the Philippines from Germany improperly classified under HTS 4401.30. As the Department is not using Philippine HTS 4401.30 in the final determination, we do not comment here on the information regarding the makeup of Philippine HTS 4401.30.

The Department has also declined to apply Philippine HTS 4401.22 in this case. We agree with Petitioner that Philippine HTS 4401.22 does not constitute the best record information for valuing Layo Wood's byproducts. Extensive information on the record indicates the Layo Wood primarily claims sawdust sold as a byproduct offset.[420] The description for HTS 4401.22 includes fuel wood chips, but omits sawdust. The Department also notes that the AUV generated by Philippine HTS 4401.22 is similar to that generated by Philippine HTS 4401.30 in that it would generate a price higher than that of other wood inputs. The Department therefore finds that the use of Philippine HTS 4401.22 to value respondents' byproducts would generate an unreasonable result, as discussed above.

Finally, we disagree with Petitioner's request that we value Layo Wood's byproducts using Thai or Indian import data for HTS 4401.30. In accordance with 19 CFR 351.408(c)(2), the Department "normally will value all factors in a single surrogate country." Because a reliable surrogate value exists on the record from the Philippines, the primary surrogate country, the Department finds no need to draw data from sources outside of the Philippines. Also, we disagree with Petitioner's request that we value Layo Wood's byproducts using the domestic Philippine price quote Petitioner placed on the record. The quote comes from what appears to be an online news article, and refers to only a single price quote, from one individual employed by a single company. The price quoted in the news article therefore does not satisfy the Department's preference for broadly available data. Additionally, the price quote appears to relate to the price of bamboo wood chips alone, which pertains to non-subject merchandise, and is therefore less specific than other potential surrogate value information on the record.[421]

Concerning Petitioner's claim that the Thai, Indian, and domestic Philippine prices are corroborated by the prices of wood products in the United States, specifically the state of Indiana, the Department disagrees with this analysis because the United States is not at comparable level of economic development. The Department's practice is to not use prices from the United States as either surrogate values or to corroborate potential surrogate values

[419] *See Citric Acid* at Comment 7.
[420] *See* Layo Wood's Section C and Section D questionnaire response, dated February 23, 2011.
[421] *See* Layo Wood's Rebuttal Brief, dated August 9, 2011, at 18.

from other countries.[422] In this investigation, the potential surrogate countries for this case are: the Philippines, India, Indonesia, Ukraine, Thailand, and Peru, and does not include the United States.[423]

Comment 25: Surrogate Value for Layo Wood's Glue

- In the preliminary determination, we valued Layo Wood's glue using HTS 3506.99. Layo Wood contends that the overwhelming amount of glue used in production is melamine glue, and that this should be valued using HTS 3909.20.90. Layo Wood further contends that because HTS 3506.99 covers glues "put up for retails sale, not exceeding a net weight of 1kg," it would be inappropriate to use considering Layo purchased glue in large quantities. Layo Wood also argues that the Department must adjust for the glue's solid content because typically adhesives have a solid content of 30-50 percent. As glue is sold internationally in dry powder form, Layo Wood argues that the Department should adjust the glue value to avoid the associated weight cost of water.[424]

- Petitioner argues that Layo Wood's characterization of HTS 3506.99 is incorrect – that the description for HTS 3506.99 does not necessarily restrict that HTS category to small-quantity specialty glue sales. Petitioner further argues that there is no record evidence to indicate that Layo Wood's melamine "glue" is best categorized under the term melamine "resin." Petitioner states that the Department should use Philippine HTS 3506.91 to value Layo Wood's glue inputs. Petitioner further argues that there is nothing on the record to indicate that glue is internationally traded in its dry form alone and that, accordingly, there is no need to adjust for concentration in Layo Wood's glue surrogate value.

Department Position: The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[425] When doing this, the Department's practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[426] For this final determination, the Department finds that Philippine HTS 3909.20.90 offers the best information available on the record to value Layo Wood's glue inputs.

The Department finds the description of Philippine HTS 3909.20.90 to be most specific to Layo Wood's glue inputs: "Amino-resins, phenolic resins and polyurethanes, in primary forms;

[422] *See Trust Chem Company Ltd., v. United States*, Slip. Op. 11-97, (Ct. Int'l Trade Aug. 3, 2011) at 16. *See., e.g., Romania Hot-Rolled 02-03 Final*, and accompanying IDM at Comment 2; *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying IDM at Comment 11.
[423] *See* Letter to All Interested Parties re: Investigation of Multilayered Wood Flooring from the People's Republic of China, dated February 18, 2011.
[424] *See* Layo Wood's Case Brief, dated August 24, 2011, at 28.
[425] *See LTP* and accompanying IDM at Comment 9.
[426] *Id.*

melamine resins; other." Despite Petitioner's arguments that melamine resins are not necessarily synonymous with melamine adhesives, the record indicates that the terms are used interchangeably.[427] Specifically, Layo Wood provided an industry news article that refers to melamine resin and melamine adhesive interchangeably.[428] We also agree with Layo Wood's argument that import data obtained from Philippine HTS 3506.91 (which exclusively deals with glues or adhesives "not exceeding a net weight of 1 kg") are not the best available information, as the record indicates that Layo Wood normally purchased glue in quantities larger than 1 kg.[429] We disagree with Petitioner's contention that Philippine HTS 3506.91 includes imports other than those included under Philippines HTS 3506. As Philippine HTS 3506.91 is a subheading of HTS 3506, the language restricting HTS 3506 to products not exceed a net weight of 1 kg applies to HTS 3506.91 as well, regardless of the "other" subcategory occurring at Philippine HTS 3506.10.

We disagree with Layo Wood's arguments regarding an adjustment for the solid content of glue traded internationally. Layo Wood has not indicated any information on the record demonstrating that glue is traded in powdered form internationally. Further, we agree with Petitioner's argument that, although the Department has made adjustments to account for the concentration of certain chemicals in calculating a NV when there was record evidence to indicate that such inputs were sold in higher or lower concentrations,[430] the respondents indicate no record evidence to demonstrate that their glue is sold in powdered form. Accordingly, we find such adjustments unsupported by the record evidence and thus, inappropriate in this proceeding.[431]

Comment 26: Surrogate Value for Pigment

- Layo Wood argues that for the final determination the Department should value pigment using the eight-digit HTS category for "other coloring matter and other preparations" because it is more specific to the actual input used in production of finished, packed goods than the six-digit HTS category used to value this material input in the *Preliminary Determination* (*i.e.*, "pigments and preparations based thereon, 'synthetic organic coloring matter'").

- No other parties commented on this issue.

Department's Position: We disagree with Layo Wood. In response to the Department's request that Layo Wood describe each factor of production reported to the Department, Layo Wood provided the following description of the pigment used in the production of multilayered

[427] *See* Layo Wood's Resubmission of its July 5, 2011, Surrogate Values for Final Determination, dated August 3, 2011, at Exhibit 1E and Exhibit 3.
[428] *See* Layo Wood's Resubmission of its July 5, 2011, Surrogate Values for Final Determination, dated August 3, 2011, at Exhibit 1E.
[429] *See* Layo Wood's Resubmission of its July 5, 2011, Surrogate Values for Final Determination, dated August 3, 2011, at Exhibit 1G.
[430] *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of June 2008 through November 2008 Semi-Annual New Shipper Review*, 74 FR 37007 (July 27, 2009).
[431] *See* Petitioner's Rebuttal Brief, dated August 9, 2011, at 29.

wood flooring: "pigment in different colors, based on propylene."[432] In the same submission, Layo Wood suggested that the Department value this input using the six-digit HTS category for "pigments and preparations based thereon."[433] In the *Preliminary Determination*, the Department used Layo Wood's suggested HTS category to value its reported pigment input. Subsequent to the *Preliminary Determination*, however, Layo Wood requested that the Department value this input using the eight-digit HTS sub-category for "other coloring matter and preparations"; however, Layo Wood cites no record evidence to support its assertion that the proposed HTS category is more specific to the pigment used by Layo Wood in the production of multilayered wood flooring. Moreover, the Department has examined the HTS category descriptions on the record of this investigation,[434] and finds that they do not support changing the HTS category used to value Layo Wood's pigment in the *Preliminary Determination*. Specifically, we note that the HTS category proposed by Layo Wood includes only titanium dioxide based pigments, and there is no evidence that Layo Wood used such a pigment in the production of multilayered wood flooring. In fact, Layo Wood has provided evidence to indicate that it uses only propylene-based pigments.[435]

Layo Wood also argues that its proposed surrogate value should be used to value Layo Wood's pigment because the Department valued the Samling Group's pigment using the HTS category for "pigment in different colors, based on propylene." The Department, however, cannot assume that Layo Wood uses the same type of pigment as the Samling Group.

For the foregoing reasons, the Department finds that Layo Wood has not met its burden to demonstrate that the surrogate value it now proposes is more specific than the surrogate value it first proposed to value the input in question.[436] Accordingly, for the final determination, the Department has continued to value Layo Wood's reported pigment input using the same HTS category used in the *Preliminary Determination*.

Comment 27: Surrogate Value for Printing Ink

- Layo Wood argues that for the final determination the Department should value printing inks using the eight-digit HTS category for "UV curable inks" because it is more specific to the actual input used in production of finished, packed goods than the more general six-digit HTS category used to value this packing input in the *Preliminary Determination* (*i.e.*, "Printing Ink, Black").

- No other parties commented on this issue.

Department's Position: We disagree with Layo Wood. In response to the Department's request that Layo Wood describe each factor of production reported to the Department, Layo Wood provided the following description of the ink used in the production of multilayered wood flooring: "printing ink."[437] In the same submission, Layo Wood suggested that the Department

[432] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.
[433] *See id.*
[434] *See* Petitioner's July 5, 2011, submission at Exhibit 24.
[435] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.
[436] For a full explanation of the Department's practice regarding the selection of surrogate values, please see Comment 11above.
[437] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.

value this input using the six-digit HTS category for "printing ink, black."[438] In the *Preliminary Determination*, the Department used Layo Wood's suggested HTS category to value its reported printing ink input.

Subsequent to the *Preliminary Determination*, however, Layo Wood requested that the Department value this input using the eight-digit HTS sub-category for "UV curable" ink; however, Layo Wood cites no record evidence to support its assertion that the proposed HTS category is more specific to the printing ink used in the production of multilayered wood flooring by Layo Wood. Specifically, we note that the HTS category proposed by Layo Wood includes only UV curable ink, and there is no evidence that Layo Wood used this type of ink. Moreover, the Department has examined the HTS category descriptions on the record of this investigation,[439] and finds that they do not provide sufficient information to support changing the HTS category used to value Layo Wood's printing ink in the *Preliminary Determination*. We note that prior to the *Preliminary Determination*, Layo Wood was in a position to provide a sufficiently detailed description of each factor of production to support the selection of the surrogate value that is most specific to each input; however, Layo Wood failed to provide a description of its ink that would support the selection of an HTS category for UV curable ink. On the contrary, we find that the six-digit HTS category first proposed by Layo Wood and used in the *Preliminary Determination* best matches Layo Wood's description of its printing ink input.

For the foregoing reasons, the Department finds that Layo Wood has not met its burden to demonstrate that the surrogate value it now proposes is more specific than the surrogate value it first proposed to value the input in question.[440] Accordingly, for the final determination, the Department has continued to value Layo Wood's reported printing ink input using the same HTS category used in the *Preliminary Determination*.

Comment 28: Surrogate Value for Paper Manual

- Layo Wood argues that for the final determination the Department should value paper manuals using the six-digit HTS category for "pictures and designs" because it is more specific to the actual input used in production of finished, packed goods than the HTS category used to value this packing input in the *Preliminary Determination* (*i.e.*, "Printed Matter, Nes").

- No other parties commented on this issue.

Department's Position: We disagree with Layo Wood. In response to the Department's request that Layo Wood describe each factor of production reported to the Department, Layo Wood provided the following description of the manuals used in the production of multilayered wood flooring: "paper manual."[441] In the same submission, Layo Wood suggested that the Department value this input using the six-digit HTS category for "Printed Matter, Nes."[442] In the

[438] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.
[439] *See* Petitioner's July 5, 2011, submission at Exhibit 24.
[440] For a full explanation of the Department's practice regarding the selection of surrogate values, please see Comment 11above.
[441] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.
[442] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.

Preliminary Determination, the Department used Layo Wood's suggested HTS category to value its reported paper manuals.

Subsequent to the *Preliminary Determination*, however, Layo Wood requested that the Department value this input using six-digit HTS sub-category for "pictures and designs"; however, Layo Wood cites no record evidence to support its assertion that the proposed HTS category is more specific to the paper manual used by Layo Wood in the packing of multilayered wood flooring. Moreover, the Department has examined the HTS category descriptions on the record of this investigation,[443] and finds that they do not provide sufficient information to support changing the HTS category used to value Layo Wood's paper manual in the *Preliminary Determination*. Specifically, the Department notes that the record lacks the description of the HTS category proposed by Layo Wood. In this regard, the Department notes that Layo Wood has not pointed to, nor is there, in fact, evidence on the record that Layo Wood's manuals included pictures and designs.

For the foregoing reasons, the Department finds that Layo Wood has not met its burden to demonstrate that the surrogate value it now proposes is more specific than the surrogate value it first proposed to value the input in question.[444] Accordingly, for the final determination, the Department has continued to value Layo Wood's reported paper manuals using the same HTS category used in the *Preliminary Determination*.

Comment 29: Surrogate Value for Tape

- Layo Wood argues that for the final determination the Department should value tape using the eight-digit HTS category for "Tape, in rolls of a width not exceeding 20cm- of polymer Vinyl chloride - other" because it is more specific to the actual input used in production of finished goods than the six-digit HTS category used to value this packing input in the *Preliminary Determination* (*i.e.*, "Tape, in rolls of a width not exceeding 20cm- of polymer Vinyl chloride").

- No other parties commented on this issue.

Department's Position: We disagree with Layo Wood. In response to the Department's request that Layo Wood describe each factor of production reported to the Department, Layo Wood provided the following description of the tape used in the packing of multilayered wood flooring: "adhesive tape."[445] In the same submission, Layo Wood suggested that the Department value this input using the six-digit HTS category for "Tape, in rolls of a width not exceeding 20cm- of polymer Vinyl chloride."[446] In the *Preliminary Determination*, the Department used Layo Wood's suggested HTS category to value its reported adhesive tape input.

[443] *See* Petitioner's July 5, 2011, submission at Exhibit 24.
[444] For a full explanation of the Department's practice regarding the selection of surrogate values, please see Comment 11above.

[445] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.
[446] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.

Subsequent to the *Preliminary Determination*, however, Layo Wood requested that the Department value this input using eight-digit HTS sub-category for "Tape, in rolls of a width not exceeding 20cm- of polymer Vinyl chloride - *other*"; however, Layo Wood cites no record evidence to support its assertion that the proposed HTS category is more specific to the adhesive tape used in the packing of multilayered wood flooring by Layo Wood. Moreover, the Department has examined the HTS category descriptions on the record of this investigation,[447] and finds that they do not provide sufficient information to support changing the HTS category used to value Layo Wood's adhesive tape in the *Preliminary Determination*. Specifically, we note that the HTS category proposed by Layo Wood excludes polyethylene tape and the record lacks sufficient evidence to conclude that excluding polyethylene tape is warranted. We note that prior to the *Preliminary Determination*, Layo Wood was in a position to provide a sufficiently detailed description of each factor of production to support the selection of the surrogate value that is most specific to each input; however, Layo Wood failed to provide a description of its tape that would support the selection of an HTS category that excludes polyethylene tape. On the contrary, we find that the six-digit HTS category first proposed by Layo Wood and used in the *Preliminary Determination* best matches Layo Wood's description of its tape input.

For the foregoing reasons, the Department finds that Layo Wood has not met its burden to demonstrate that the surrogate value it now proposes is more specific than the surrogate value it first proposed to the input in question. Accordingly, for the final determination, the Department has continued to value Layo Wood's reported adhesive tape using the same HTS category used in the *Preliminary Determination*.

Comment 30: Density Conversion for Layo Wood's Packing Fiberboard

- In the preliminary determination, the Department converted packing fiberboard to a value-per-density unit at the rate of 740kg/m^3. Layo Wood asserts that the Department should use the rate of 650kg/m^3, as this was the density of the packing fiberboard used by Layo Wood during the POI.

- No other party commented on this issue.

Department's Position: In this case, we agree that the record indicates that the median density of Layo Wood's packing fiberboard is 650 kg/m^3.[448] Layo Wood's questionnaire responses indicate that it used packing fiberboard with densities ranging from 600 kg/m^3 to 700 kg/m^3.[449] The Department finds the density Layo Wood reported specific to its inputs more accurate than the general, hypothetical densities placed on the record by Petitioner. The median point in this range is 650 kg/m^3 per cubic meter.

The Samling Group

[447] *See* Petitioner's July 5, 2011, submission at Exhibit 24.
[448] *See* Layo Wood's Supplemental Section D Questionnaire Response, dated April 7, 2011, at 55; *see also* Layo Wood's Case Brief, dated August 24, 2011, at 27.
[449] *See id.*

Comment 31: Value of Certain the Samling Group's Veneer Inputs

- The Samling Group suggests that the Department should value certain of its veneer inputs using a surrogate value instead of the ME prices reported by the Samling Group for the *Preliminary Determination* because the ME-sourced veneers in question were not used in production of U.S. sales of subject merchandise. Specifically, the Samling Group argues that the Department should value these veneers input using Philippine import data for HTS category 4408.90.10.

- Petitioner contends that if the Department determines to value the Samling Group's veneers in question using a surrogate value, then the Department should value this input using HTS category 4408.39, which covers tropical wood veneers, rather than HTS category 4408.90, which covers NCNT veneers.

Department's Position: For the final determination, the Department is valuing the Samling Group's veneers in question using 2009 NSO data for Philippine HTS category 4408.39.90, which covers "other" tropical wood veneers.[450] The Department agrees with the Samling Group's assertion that the record evidence indicates that the Department should value the veneers in question using a surrogate value. In particular, based on the Department's verification findings, we determined that none of the Samling Group's reported sales of subject merchandise utilized its ME purchases of the veneers in question because the product characteristics of the ME purchased veneers were different than the product characteristics of the veneers used in production of subject merchandise.[451] The Department also agrees with Petitioner's assertion that it should value these veneers using import data from Philippine HTS category 4408.39, which covers tropical wood veneers, rather than HTS category 4408.90, which covers NCNT veneers. In particular, according to the notes accompanying Chapter 44 of the HTS schedule, which we relied on in the *Preliminary Determination*, the veneers in question are identified as a "tropical wood" for the purposes of classification under HTS category 4408.39;[452] therefore, these veneers are appropriately classified using HTS category 4408.39, which covers "tropical wood" veneers, rather than HTS category 4408.90, which only covers NCNT veneers. However, for the final determination, as the Department explained in Comment 15, Tropical Wood Veneers, *supra*, the Department is valuing tropical wood veneers using 4408.39.90, which covers "other" tropical wood veneers. Therefore, the 2009 NSO data for Philippine HTS category 4408.39.90 is appropriate for valuing the Samling Group's veneers in question because it is specific to Samling's input.

Comment 32: Surrogate Value for the Samling Group's Glue Input

- The Samling Group suggests that the Department should value its urea resin-based glue input using NSO data for Philippine HTS subcategory 3909.10.90, rather than NSO data for the broader Philippine HTS category 3909.10, which was used in the *Preliminary*

[450] For a BPI discussion of this change, *see* Samling Final Analysis Memorandum.
[451] *See* BTI Verification Report, at 30-31.
[452] *See* Petitioner's Second Surrogate Value Submission, dated March 21, 2011, at Exhibit 6; *see also*, Samling Preliminary Analysis Memorandum, at 11 and Attachment 1.

Determination. The Samling Group contends that HTS category 3909.10, which covers "urea resins; thiourea resins," contains two HTS subcategories: (1) HTS subcategory 3909.10.90, which is specific to Samling's glue input because it covers "other, formaldehyde adhesive;" and (2) HTS subcategory 3909.10.10, which is not specific to Samling's glue input because it covers "moulding compounds." Thus, the Samling Group argues that it is more appropriate to value its glue input using the eight-digit HTS subcategory 3909.10.90, rather than the broader six-digit HTS category 3909.10.

- No other party commented on the Samling Group's glue input.

Department's Position: For the final determination, the Department is valuing the Samling Group's glue input using POI NSO data from the eight-digit Philippine HTS category 3909.10.90, which covers "other; urea formaldehyde adhesive." For an explanation of the Department's practice regarding surrogate value selection, *see* Comment 13: Surrogate Value for Plywood, *supra*.

The Department agrees with the Samling Group that Philippine HTS category 3909.10.90 is more specific to its glue input than the broader HTS category 3909.10. Specifically, the six-digit Philippine HTS category 3909.10 contains two eight-digit subcategories: (1) HTS subcategory 3909.10.10, covering "moulding compounds;" and (2) HTS subcategory 3909.10.90, covering "other," which includes a specific ten-digit subcategory "urea formaldehyde adhesive."[453] In addition, on the record of this investigation, the Samling Group has provided the Department with ample evidence regarding the composition of its glue input, which is identified as being primarily composed of urea formaldehyde.[454] As a result, the Samling Group's glue input can be accurately categorized under HTS subcategory 3909.10.90, "other," "urea formaldehyde adhesive." On the other hand, the Department has no evidence on the record indicating that the Samling Group uses "moulding compounds" as an input in the production of subject merchandise. Therefore, while the Philippine NSO data on which we are relying is only available to the eight-digit HTS category, the Department has record information that the eight-digit HTS category 3909.10.90, "other," which includes the ten-digit subcategory "urea formaldehyde adhesive," is clearly more specific to Samling's glue input than the six-digit Philippine HTS category 3909.10. Moreover, no other party commented on the Samling Group's glue input. Thus, in accordance with the CIT's decision in *Taian Ziyang Food (CIT 2011)*, the Department finds it appropriate to value Samling's glue input using data from HTS category 3909.10.90.

Comment 33: Surrogate Value for Labels

- The Samling Group argues that for the final determination the Department should value labels using the eight-digit HTS category for "self-adhesive labels" included in NSO data because it is more specific to the actual input used in production of finished, packed

[453] *See* Petitioner' Post-Preliminary Surrogate Value Re-Submission, dated August 3, 2011, at Exhibit 24.
[454] *See* Samling's April 14, 2011, Third Supplemental Questionnaire Response – Section D for Times Flooring and BTI at Exhibit 3S-23; *see also* Samling's April 26, 2011, Glue Certifications to Support Section D Response.

goods than the HTS category used to value this packing material in the *Preliminary Determination* (*i.e.*, "label-others").

- No other parties commented on this issue.

Department's Position: In its March 15, 2011, submission, the Samling Group suggested that the Department value this input using the Indonesian ten-digit HTS category for "gummed or *adhesive* paper & paperboard (*i.e.*, 4811.41.90.00)."[455] However, in the *Preliminary Determination*, the Department valued the Samling Group's labels using a Philippine HTS category that, upon closer examination, may not include adhesive labels (*i.e.*, 4821.10.90). We find, therefore, that the Philippine HTS category for adhesive labels proposed by the Samling Group (*i.e.*, 4811.41.00) is more specific to the packing input in question. Accordingly, for the final determination, we have valued the Samling Group's labels using the HTS category for adhesive labels proposed by the Samling Group.

Comment 34: Surrogate Value for Cellophane Tape

- The Samling Group argues that for the final determination the Department should value cellophane tape using the eight-digit HTS category for "Other; Pressure sensitive cellophane adhesive tape" because it is more specific to the actual input used in production of finished, packed goods than the HTS category used to value this packing material in the *Preliminary Determination* (*i.e.*, "self-adhesive plates, sheets, film, foil, tape, strip and other shapes, of plastics, whether or not in rolls; in rolls of a width not exceeding 20 cm").

- No other parties commented on this issue.

Department's Position: In response to the Department's request that the Samling Group describe each factor of production reported to the Department, the Samling Group provided the following description of the tape used in the packing of multilayered wood flooring: "cellophane tape."[456] In its March 15, 2011, submission, the Samling Group suggested that the Department value this input using the Indonesian ten-digit HTS category for "Oth{er} self-adhesive plate, sheet, film, in roll width= {*sic*}(*i.e.*, 3919.10.90.00)."[457] In the *Preliminary Determination*, the Department valued the Samling Group's reported adhesive tape input using a Philippine six-digit HTS category for "self-adhesive plates, sheets, film, foil, tape, strip and other shapes, of plastics, whether or not in rolls; in rolls of a width not exceeding 20 cm" (*i.e.*, 3919.10) The first six digits of the Indonesian ten-digit HTS category proposed by the Samling Group are identical to the Philippine six-digit category used to value the Samling Group's cellophane tape in the *Preliminary Determination*. There is no requirement that countries harmonize HTS categories beyond the six-digit level. Thus, the Philippine HTS category selected by the Department includes, *inter alia*, imports of cellophane tape that would be included in the Indonesian ten-digit category proposed by the Samling Group.

[455] *See* Samling Group's March 15, 2011 submission at Exhibit 12. Emphasis added.
[456] *See* Layo Wood's May 2, 2011, submission at Exhibit 8.
[457] *See* The Samling Group's March 15, 2011 submission at Exhibit 12. The HTS category description provided by the Samling Group in this submission appears to be truncated because it contains no width information.

The Samling Group asks the Department to value its cellophane tape using a more specific subsidiary Philippine HTS category than the one used in the *Preliminary Determination* (*i.e.*, 3919.10.11); however, the Samling Group cites no record evidence to support its assertion that the proposed eight-digit HTS category is more specific to the cellophane tape used by the Samling Group in the packing of multilayered wood flooring. Moreover, the Department has examined the HTS category descriptions on the record of this investigation,[458] and finds no indication that a change to the HTS category used to value Samling Group's cellophane tape in the *Preliminary Determination* is warranted. Specifically, we note that the HTS category proposed by the Samling Group excludes polyethylene tape, and the record lacks sufficient evidence to conclude that excluding polyethylene tape is warranted. We note that prior to the *Preliminary Determination*, the Samling Group was in a position to provide a sufficiently detailed description of each factor of production to support the selection of the surrogate value that is most specific to each input; however, the Samling Group failed to provide a description of its tape that would support the exclusion of an HTS category for polyethylene tape.

For the foregoing reasons, the Department finds that the Samling Group has not met its burden to demonstrate that its proposed surrogate value is more specific to the input in question. Accordingly, for the final determination, the Department has continued to value the Samling Group's reported cellophane tape input using the same HTS category used in the *Preliminary Determination*.

Comment 35: Surrogate Value for Corrugated Cardboard Carton

- Because certain significant information regarding this issue is proprietary, the Department has addressed this issue in greater detail in a separate, proprietary memorandum.[459]

- The Samling Group argues that the Department should value corrugated cardboard cartons using the six-digit HTS category for "paper, corrugated, in rolls or sheets (*i.e.*, 4808.10)" for the final determination because it is more specific to the actual input used in production of finished, packed goods than the HTS category used to value this packing input in the *Preliminary Determination* (*i.e.*, "cartons, boxes, and cases of corrugated paper" (*i.e.*, 4819.10). Samling Group states that such a change in the surrogate value is warranted due to certain verification findings.

- Petitioner, however, argues that the Department's verification finding is limited to only Samling Group affiliated producer RPC, and should not be used as the basis for determining the appropriate surrogate value for all of Samling Group companies.

Department's Position: During the verification of RPC, the Department found certain evidence regarding the corrugated cardboard cartons reported by the Samling Group, which indicates that the Philippine HTS category proposed by the Samling Group is more specific to the input in question.[460] Additionally, the Department finds that it is appropriate to use this Philippine HTS category to value all corrugated cardboard carton FOPs reported by each of the Samling Group

[458] *See* Petitioner's July 5, 2011, submission at Exhibit 24.
[459] *See* Samling Group Proprietary Memorandum.
[460] *See* RPC Verification Report at 27.

producers because the Department's verification finding represents the most specific information on the record regarding this input. While the Department chose to verify two of the affiliated producers within the Samling Group, it made a finding regarding corrugated cardboard cartons only during its verification of RPC. In limiting its verification of one aspect of the packing process to a single Samling Group production facility, the Department properly exercised its discretion to limit the scope of verification.[461] Furthermore, there is no evidence to suggest that the manner in which the corrugated cardboard cartons were used to pack merchandise varied among the Samling Group producers. Thus, the Department finds that it is appropriate to use the Philippine HTS category suggested by the Samling Group to value all reported corrugated cardboard carton FOPs for the final determination.

Comment 36: Post-Verification Adjustments to the Samling Group's Reported U.S. Sales Data

Comment 36.A: Adjustment to Gross Unit Price

- Because certain significant information regarding this issue is proprietary, the Department has addressed this issue in greater detail in a separate, proprietary memorandum.[462]

- Petitioner argues that the Department should decrease the gross unit price of all of Company A's sales percent to adjust for misreported sales values.

- The Samling Group, however, argues that the discrepancy noted by Petitioner does not reflect misreporting of the value of the sales at issue, and, accordingly, such an adjustment is not warranted.

Department's Position: There is no evidence that the Samling Group misreported the gross value of the sales made by U.S. affiliate, Company A. During the Department's verification of the total POI quantity and value of sales of multilayered wood flooring, the Department was able to closely reconcile the value of POI sales reported to the Department to the POI value of sales recorded in Company A's financial accounting records, noting only an insignificant discrepancy.[463] Thus, the Samling Group demonstrated that it reported to the Department the total quantity and value of Company A's POI sales. The Department cannot, as Petitioner urges, attribute this discrepancy to an error in the Samling Group's reporting of the gross value of Company A's U.S. sales. While it is true that the Department found a minor discrepancy between the total POI sales quantity and value reported to the Department and the POI quantity and value recorded in Company A's financial accounting records, Department officials reviewed a number of selected transactions, and found no evidence that the Samling Group misreported

[461] The CIT has explained that "{a} verification is a spot check and is not intended to be an exhaustive examination of the respondent's business." *See NTN Bearing Corp. of Am. v. United States*, 186 F. Supp. 2d 1257, 1296 (CIT 2002).
[462] *See* The Samling Group Proprietary Memorandum.
[463] *See* Verification of Constructed Export Sales ("CEP") for Baroque Timber Industries (Zhongshan) Co., Ltd. ("BTI"), Riverside Plywood Corporation ("RPC"), Samling Elegant Living Trading (Labuan) Limited ("SELT"), Samling Riverside Co., Ltd. ("SR"), and Suzhou Times Flooring Co., Ltd. ("STF") (collectively, the "Samling Group") at {Company A}, dated July 22, 2011, at 8-12.

the gross value of Company A sales.[464] For the foregoing reasons, the Department has not made Petitioner's requested adjustment to the gross value of Company A's sales.

Comment 36.B: U.S. Duties

- Because certain significant information regarding this issue is proprietary, the Department has addressed this issue in greater detail in a separate, proprietary memorandum.

- Petitioner argues that the Department should apply a calculated U.S. duty deduction for all SGUSA sales for which no duty was reported.

- The Samling Group, however, argues that the sales in question were exempt from duties, and, therefore, such an adjustment is not warranted.

Department's Position: At verification, the Department found no evidence that the Samling Group failed to report all U.S. duties incurred for POI sales of multilayered wood flooring that were made by its U.S. affiliate, SGUSA. During verification, SGUSA company officials were able to demonstrate that they properly reported all U.S. duties, where applicable, to the Department. For the foregoing reasons, the Department has not applied an additional calculated U.S. duty expense to any of Samling Group's reported U.S. sales.

Comment 37: SGUSA's Transportation Expenses

- Petitioner argues that the Department should base certain SGUSA transportation costs (*i.e.*, international freight ("INTNFRU"), U.S. brokerage and handling ("USOTHRU"), and U.S. inland freight – port-to-warehouse ("INLFPWU")) on costs incurred during the POI rather than costs incurred in the prior fiscal year. In particular, Petitioner suggests that the Department should recalculate SGUSA's reported transportation expenses using figures from the bill of lading for the one shipment SGUSA received during the POI, which was verified by the Department.

- Conversely, the Samling Group argues that the Department should not adjust SGUSA's reported transportation costs (*i.e.*, INTNFRU, USOTHRU, and INLFPWU). The Samling Group contends that recalculating SGUSA's reported freight costs based on Petitioner's suggestion would not capture the actual freight costs SGUSA incurred for subject merchandise sold during the POI because of the unique circumstances surrounding SGUSA's consignment sales. In contrast, to best capture the freight costs associated with SGUSA's POI sales, the Samling Group suggests that it was necessary to report costs based on all shipments of consignment merchandise made during the most recently completed fiscal year, which overlaps with the POI.

Department's Position: For the final determination, the Department is continuing to rely on SGUSA's stated methodology for calculating SGUSA's reported transportation costs (*i.e.*, INTNFRU, USOTHRU, and INLFPWU). The Department finds that the Samling Group's

[464] *See id.*, at 12-13.

reported transportation costs were based on a reasonable reporting methodology. In relevant part, section 772(c)(2) of the Act provides that the Department shall reduce the price used to establish EP or CEP by making an adjustment for the following item: "(A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, 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." Thus, in accordance with section 772(c)(2) of the Act, the Department attempts to determine the actual expenses incurred (*e.g.*, transportation costs) in the sale of subject merchandise during the POI and then, to calculate EP or CEP, reduces the reported gross unit price by those expenses.

In the instant case, SGUSA reported that it incurred certain transportation costs (*i.e.*, INTNFRU, USOTHRU, and INLFPWU) on the sale of subject merchandise. However, record evidence suggests that certain unique factors influenced SGUSA's reporting of these transportation costs: (1) SGUSA stated that it cannot link the transportation costs in question to specific sales because these sales were consignment sales and the subject merchandise was comingled with other SGUSA subject merchandise when it was received in the customer's warehouse;[465] and (2) SGUSA provided evidence regarding the average number of days in inventory for its consignment sales during the POI.[466] Thus, SGUSA had no way of reporting the actual transportation costs incurred on its POI consignment sales. Accordingly, to report transportation costs as accurately as possible, SGUSA stated that it calculated transportation costs (*i.e.*, INTNFRU, USOTHRU, and INLFPWU) based on the average corresponding transportation cost for all subject merchandise shipments shipped to the consignment warehouse during the most recently completed fiscal year, which partially overlapped the first month of the POI.[467] SGUSA equally reported this average transportation cost for all POI consignment sales. It should be noted that regarding the Samling Group's reported methodology utilizing the prior fiscal year to calculate transportation costs, the Department noted no discrepancies during verification.[468]

The Department disagrees with Petitioner's assertion that the Department should recalculate SGUSA's reported transportation costs by applying values from the bill of lading for the one shipment SGUSA received during the POI to all POI consignment sales. In particular, recalculating SGUSA's reported transportation costs using values from the one bill of lading referred to by Petitioner would not necessarily provide a more accurate basis for reporting SGUSA's transportation costs associated with POI sales. First, for the reason stated above, the Department cannot link the transportation costs identified in the bill of lading referred to by Petitioner to a specific POI sale, or sales, reported by SGUSA. Thus, the Department would not necessarily be applying actual transportation costs to POI sales. Second, based on the average number of days in inventory for SGUSA's consignment sales, the subject merchandise sales during the POI were not necessarily associated with transportation costs incurred during the POI.[469] Consequently, using the Petitioner's suggested methodology would potentially result in applying transportation costs to POI sales that did not incur those transportation costs. Third, the consignment sale shipment data provided by SGUSA indicate that SGUSA's shipments were

[465] *See* Samling Section C Response, at 27-31.
[466] *See* SGUSA Verification Report, at 2, 11-12, and 14.
[467] *Id*. at 11-12 and Exhibit 10.
[468] *Id*.
[469] For a BPI discussion of SGUSA's inventory carrying days, *see* SGUSA Verification Report at 2 and 14.

made at irregular intervals, often with several months having no shipment activity.[470] Therefore, given the unique circumstances of this case, a broader-based methodology for calculating transportation costs associated with POI sales is more reasonable than relying on costs identified in one bill of lading.

In sum, the Department does not agree that relying on the one bill of lading issued during the POI provides a more accurate basis for calculating SGUSA's actual POI transportation costs. Rather, based on the record evidence regarding average inventory carrying days, the transportation costs incurred by SGUSA prior to the POI are more likely to capture the actual transportation costs associated with POI sales. Because the Department agrees with SGUSA that it used a reasonable methodology to calculate and report the transportation costs incurred on its POI consignment sales, and because this methodology was verified by the Department without any discrepancies, the Department is continuing to rely on this methodology for the final determination.

Comment 38: Inland Freight – Warehouse to Customer

- Petitioner contends that the Department should include the inland freight – warehouse to customer – field (INLFWCU) in the calculation of the Samling Group's U.S. net price.

- No other party commented on this issue.

Department's Position: The Department agrees with Petitioner that for the *Preliminary Determination*, we inadvertently excluded the inland freight – warehouse to customer – field (*i.e.*, INLFWCU) from the calculation of the Samling Group's U.S. net price. In relevant part, section 772(c)(2)(A) of the Act states that "the price used to establish EP and CEP shall be…reduced by…the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, 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." In the instant case, the Samling Group reported that it incurred certain costs associated with U.S. inland freight from warehouse to customer.[471] However, in calculating the Samling Group's U.S. net price, the Department did not reduce the reported gross unit U.S. price by Samling's reported costs associated with U.S. inland freight from warehouse to customer.[472] Thus, for the final determination, we have corrected this ministerial error and reduced the Samling Group's reported gross unit U.S. price by Samling's costs associated with U.S. inland freight from the warehouse to customer (*i.e.*, we reduced the reported gross unit price by the INLFWCU field).[473]

Comment 39: Other Revenue for U.S. Inland Freight

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[470] *Id.*
[471] *See* Samling's May 5, 2011, Sixth Supplemental Questionnaire Response – Part 1 Questions ("Samling Sixth Supplemental Response") at 10; *see also*, Samling's May 26, 2011, Submission of Factual Information Prior to Verification – Revised U.S. Sales Database ("Samling Pre-Verification Information").
[472] *See* Samling Amended Preliminary Analysis Memorandum, at Attachments 2 and 4; *see also* Samling Preliminary Analysis Memo at 6-7 and Attachments 2 and 7.
[473] *See* Samling Final Analysis Memorandum.

- Petitioner contends that the Department should cap the value in of the Samling Group's other revenue (reported in the OTHRREV field) at the amount of inland freight expense reported for each sale in the calculation of the Samling Group's U.S. net price.

- No other party commented on this issue.

Department's Position: For the final determination, the Department is treating freight revenue as an offset to freight costs rather than as an addition to U.S. price. As a result, the Department agrees with Petitioner's assertion that the Department should cap the Samling Group's reported other freight revenue, which reflects customer payments to Samling for U.S. inland freight expenses, at the amount of U.S. inland freight expenses incurred by the Samling Group. However, it should be noted that there is nothing to cap in the instant case because for all sales observations reported by the Samling Group, U.S. inland freight expenses incurred by the Samling Group exceed the value of the freight revenue reported.

Based on the plain language of the statute and the Department's regulations, it has been the Department's stated practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR § 351.102(b)(38).[474] Rather, the Department has incorporated freight-related revenues as offsets to movement expenses that are then deducted from U.S. price because they relate directly to the movement and transportation of subject merchandise under section 772(c)(2) of the Act.[475] In addition, the Department has stated that where freight revenue earned by a respondent exceeds the freight charges incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).[476]

In the instant investigation, record evidence supports the Samling Group's claim that its additional freight revenue is related to U.S. inland freight charges, which were reported as: (1) U.S. inland freight from port to warehouse (*i.e.*, reported in the INLFPWU field);[477] and (2) U.S. inland freight from warehouse to customer (*i.e.*, reported in the INLFWCU field).[478] After summing the values reported in the INLFPWU and the INLFWCU fields, the Department finds

[474] *See Narrow Woven Ribbons/PRC* (July 19, 2010) and accompanying IDM at Comment 3; *see also Carrier Bags/PRC* (February 11, 2009) and accompanying IDM at Comment 6.
[475] *See Carrier Bags/PRC* (February 11, 2009) and accompanying IDM at Comment 6.
[476] *Id.* (stating that "Our offset practice limits the granting of an offset to situations where a respondent incurs expenses and realizes revenue for the same type of activity."); *see also See Narrow Woven Ribbons/PRC* (July 19, 2010) and accompanying IDM at Comment 3 (stating that freight revenue profits "should be attributable to the sale of the freight service, but not the subject merchandise.").
[477] *See* Samling's April 18, 2011, Response to Fourth Supplemental Questionnaire ("Samling's Fourth Supplemental Response") at 26.
[478] *See* Samling Sixth Supplemental Response at 10. To be clear, however, the Department notes that the Samling Group did not actually report that it incurred both U.S. inland freight charges for all sales observations where it reported other freight revenue. *See* Samling Pre-Verification Information.

that the value reported in the OTHERREV is less than or equal to the revenue offset cap for all of the Samling Group's sales observations.[479]

Thus, for the final determination, because the Samling Group's freight revenue does not exceed U.S. inland freight expenses incurred by the Samling Group, it is not necessary for the Department to cap Samling's reported freight revenue.

Comment 40: Indirect Selling Expense Ratio of Affiliated Reseller

- Petitioner argues that the Department should recalculate the indirect selling expense ratio of the Samling Group's affiliated U.S. reseller to include bad debt expense and certain other expenses.

- According to petitioner, the Department's standard practice with regard to pure CEP selling entities is to base U.S. indirect selling expenses on all expenses incurred in the U.S. market that are not reported as direct expenses.

- Petitioner also contends that the Department's standard practice with regard to bad debt expense is to include the full amount of the expense in the indirect selling expense ratio.

- The Samling Group posits that the Petitioner's argument with regard to certain other expenses is based on a faulty reading. According to the Samling Group, the amount that the Petitioner claims should be included is actually a totaling account in the trial balance, and all of the individual expenses that make up that total have already been included in the indirect selling expense ratio calculation, with the exception of the bad debt expense.

- With regard to bad debt expense, the Samling Group contends that the Department has previously stated that it is properly treated as a direct selling expense. The Samling Group asserts that if a selling expense directly relates to a particular transaction rather than general operations, it would not be appropriate to include it in indirect selling expenses.

Department's Position: We agree with Petitioner that the bad debt expense should be included in the indirect selling expense ratio of the Samling Group's affiliated reseller. Although the Samling Group is correct that the Department may sometimes treat bad debt expense as a direct selling expense, we note that the Department has done so in past cases only when there was evidence on the record that tied the expense directly to sales of subject merchandise.[480] When the record evidence is inadequate to tie the bad debt expense directly to sales of subject merchandise,[481] or when the bad debt expense is recorded via a provision under the allowance

[479] *See* Samling Final Analysis Memorandum, at Exhibit 7.
[480] *See Shrimp from Ecuador* and accompanying IDM at Comment 8.
[481] *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part*, 75 FR 41813 (Monday, July 19, 2010) and accompanying IDM at Comment 5

method,[482] the Department's practice is to include the expense in indirect selling expenses.[483] The information on the record of this proceeding shows that the Samling Group's affiliated reseller recorded its bad debts expense under the allowance method, and there is no record evidence that directly ties the expense to sales of subject merchandise. Thus, we are unable to treat the affiliated reseller's bad debt expense as a direct selling expense and have included it in the affiliate's indirect selling expense ratio in accordance with our practice.

With regard to the certain other expenses, we agree with the Samling Group that Petitioner's argument is not supported by the record. The verification exhibits clearly show that each of the items included in the total cited by Petitioner was already included in the total indirect selling expenses of the affiliated reseller, and that no adjustment is therefore necessary.

Comment 41: SGUSA's Indirect Selling Expense Ratio

- Petitioner argues that the Department should rely on a company-specific indirect selling expense ratio for SGUSA in the final determination.

- Petitioner asserts that SGUSA and its affiliate are separate legal entities, and that no agreements exist that address the issue of common operations.

- The Samling Group argues that revising the indirect selling expense ratio to eliminate the revenues and expenses of SGUSA's affiliate would ignore considerable record evidence regarding the intertwined nature of the companies' operations.

- The Samling Group contends that the Department confirmed at verification that it would not be possible to calculate an indirect selling expense ratio exclusive to SGUSA, and that such a calculation would not reflect SGUSA's normal business operations.

Department's Position: We agree with the Samling Group that the Department should not revise the indirect selling expense ratio to eliminate the revenues and expenses of SGUSA's affiliate. The Department examined the records and operations of both companies at verification and confirmed that their selling and administrative functions are completely intertwined and inseparable.[484] No records are kept as to how much time employees spend working on behalf of either company, nor as to how much expense each company incurs on the other company's behalf. Thus, it is not possible to determine how much of the indirect selling expenses recorded in either company's financial statements actually relate to that specific company's sales.

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[482] *See Circular Welded Pipe from Korea* at Comment 4 and *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007) and accompanying IDM at Comment 14.

[483] Under the allowance method a company estimates its anticipated bad debt exposure based on prior experience with non-payment by customers. It is unknown at the time of record which debts will actually prove to be collectible.

[484] *See* SGUSA Verification Report at page 13.

Accordingly, we find it reasonable to calculate the indirect selling expense ratio based on the total indirect selling expenses and the total sales revenue of both companies. In this way, the total indirect selling expenses are properly allocated to the total sales to which they relate. Moreover, this methodology has been used by the Department in past proceedings.[485] Further, this calculation acknowledges the fact that both companies performed selling functions and incurred selling expenses in relation to each other's sales. Accordingly, we have not adjusted SGUSA's indirect selling expense ratio at this final determination.

Other Issues

Comment 42: Correction of Lizhong's name

- Only one English translation of Shanghai Lizhong's name was listed in the customs instructions accompanying the *Preliminary Determination*. Shanghai Lizhong exported under both the name "Shanghai Lizhong Wood Product Co., Ltd." as well as the name "The Lizhong Wood Industry Limited Company of Shanghai." Upon Shanghai Lizhong's request, the Department corrected the associated customs instructions. Shanghai Lizhong argues that the Department should continue to use the correct name in the final determination.

- No other party commented on this issue.

Department Position: The *Preliminary Determination* listed Shanghai Lizhong Wood Product Co., Ltd., as receiving an antidumping rate separate from the PRC entity. Shanghai Lizhong similarly received a separate rate in the amended *Preliminary Determination*. After the publication of the amended *Preliminary Determination*, Shanghai Lizhong requested that the Department instruct U.S. Customs and Border Protection ("Customs") to apply a separate rate to exports from "Shanghai Lizhong Wood Product Co., Ltd." as well as "The Lizhong Wood Industry Limited Company of Shanghai" in order to avoid "unnecessary confusion at the port."[486] Based on this request, the Department reviewed Shanghai Lizhong's separate rate application and found that Shanghai Lizhong had listed its name as "The Lizhong Wood Industry Limited Company of Shanghai" on export documentation regarding multilayered wood flooring products entering the United States during the POI.[487] On July 28, 2011, the Department placed a memo on the record detailing the revision of cash deposit instructions such that Shanghai Lizhong Wood Product Co., Ltd., also known as the Lizhong Limited Wood Industry Company of Shanghai, received a cash deposit rate of 6.78 percent for multilayered wood flooring exports from the People's Republic of China during the POI.[488] The Department has continued to include both Shanghai Lizhong Wood Products Co., Ltd., and the Lizhong Limited Wood

[485] *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 2332 (January 13, 2011) and accompanying IDM at Comment 5.
[486] *See* Letter from Shanghai Lizhong, dated June 23, 2011, at 2.
[487] *See* Memorandum for Christian Marsh, through Abdelali Elouaradia, dated July 28, 2011.
[488] *See* Memorandum for Christian Marsh, through Abdelali Elouaradia, dated July 28, 2011.

Industry Company of Shanghai, as separate rate companies for the purposes of the final determination.

Comment 43: Whether the Department Should Have Selected Fine Furniture as a Voluntary Respondent

- Fine Furniture argues that the Department should grant Fine Furniture voluntary respondent treatment and assign the company an individual dumping margin for the final determination. Fine Furniture asserts that it has exceeded the statutory requirements for voluntary respondents by providing a complete response to the Department's questionnaire as well as a calculation of its own dumping margin (resulting in a margin calculation of zero).

- Fine Furniture contends that the Department improperly rejected Fine Furniture's submission of ministerial error rebuttal information, which included a calculation of Fine Furniture's dumping margin. Fine Furniture argues that this submission represents the best information available for calculating an accurate individual dumping margin, and should be replaced on the record.

- Petitioner, however, argues that the CIT has explicitly rejected the argument that the statute requires the Department to calculate an individual dumping margin for all companies that request voluntary respondent treatment.

- Petitioner contends that the Department properly rejected Fine Furniture's submission of factual information as an impermissible reply to a ministerial error comment.

- Petitioner further argues that the Department should not rely on Fine Furniture's questionnaire responses and margin calculation because the Department did not accept Fine Furniture as a voluntary respondent and, accordingly, no supplemental questionnaires were issued, nor has any of the information been verified.

Department's Position: The Department disagrees with Fine Furniture and has assigned Fine Furniture the antidumping duty rate calculated for the companies that were not individually investigated but were granted a separate rate for the final determination. In the instant investigation, the Department carefully considered all available options regarding the selection of respondents and concluded that it was not practicable to determine individual weighted average dumping margins for each known exporter and producer of multilayered wood flooring.[489] Therefore, pursuant to section 777A(c)(2) of the Act, the Department exercised its discretion to limit its selection of respondents to three producers/exporters.[490]

[489] *See* Section 777A(c)(1) of the Act. *See also* Memorandum regarding: Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Respondent Selection, dated January 7, 2011 ("Respondent Selection Memorandum"). The Department subsequently issued a revised respondent selection memorandum; however, its decision to limit the number of respondents selected for individual examination remained unchanged. *See* Memorandum regarding: Antidumping Duty Investigation of Multilayered Wood flooring from the People's Republic of China: Revised Respondent Selection Memorandum, dated February 8, 2011.

[490] Section 777A(c)(2) of the Act states, in pertinent part: If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved

As discussed in the Department's respondent selection memorandum, the Department lacked the resources required to examine more than three respondents in this investigation. Because each of these respondents has participated fully in this investigation, it was neither necessary nor practicable to individually examine the companies that requested voluntary respondent treatment in accordance with section 782(a) of the Act.

The Department disagrees with Fine Furniture's assertion that a plain reading of section 782(a) of the Act requires the Department to calculate individual dumping margins for producers or exporters when a small number of companies have requested voluntary respondent treatment in accordance with section 351.204(d) of the Department's regulations.[491] The CIT has upheld the Department's decision to limit the number of respondents selected for examination to mandatory respondents without calculating individual dumping margins for companies that requested voluntary respondent treatment pursuant to 19 CFR § 351.204(d). In its decision, the CIT explicitly rejected the argument that section 782(a) of the Act requires the Department to individually examine voluntary respondents when two voluntary respondents have participated in the proceeding.[492] In rejecting this argument the CIT made the following finding:

> It is clear from the language of the *SAA* and the {Act} itself, that Congress has spoken on the matter. The authority to limit the number of respondents for examination rests "exclusively" with Commerce. Therefore, the Court finds that Commerce's determination to limit its review to three mandatory respondents was within the bounds of its statutory authority.[493]

Thus, it is clear that the Department's decision not to examine voluntary respondents in the instant investigation is in accordance with Department practice, legislative intent, and judicial precedent.

The Department further disagrees with Fine Furniture's argument that the Department must calculate an individual dumping margin for Fine Furniture because the Department did not issue a formal notice of its decision not to calculate individual margins for voluntary respondents. In its respondent selection memorandum, the Department notified parties early in the proceeding that it lacked the resources to examine all potential producers or exporters of subject merchandise. Thus, Fine Furniture was notified that it was not selected for individual examination, and was made aware that constraints on the Department's resources could limit the Department's ability to examine information submitted by companies seeking voluntary respondent treatment. Thus, additional, formal notification is not required or necessary. Fine Furniture contends that because section 351.204(d)(1) of the Department's regulations states that the "Secretary will determine as soon as practicable, whether to examine a voluntary respondent individually," the Department must formally announce its decision not to examine voluntary respondents in each proceeding. Fine Furniture, however, misconstrues the language of 19 CFR

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in the investigation, the administering authority may determine the weighted average dumping margin for a reasonable number of exporters by limiting its examination to…exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

[491] Fine Furniture also states that it requested voluntary respondent treatment in accordance with 19 CFR § 351.312(f). We note, however, that 19 CFR § 351.312(f) does not govern antidumping duty investigations.

[492] *Longkou Haimeng Mach. Co. et al. v. United States*, 581 F. Supp. 2d 1344, 1351-52 (Ct. Int'l Trade Oct. 2008).

[493] *Id.* at 1351.

§ 351.204(d)(1). Unlike other sections of the Department's regulations, 19 CFR § 351.204(d)(1) sets forth no regulatory deadline upon which the Department must make its decision to examine voluntary respondents, nor does it require the Department to notify parties when it determines that it cannot examine voluntary respondents.

The Department disagrees with Fine Furniture's claim that the Department improperly rejected its June 6, 2011, submission, which contained, *inter alia*, a calculation purportedly demonstrating that its individual margin was zero. The Department determined that Fine Furniture's submission was an impermissible reply to a ministerial error allegation, and removed all copies of the submission from the administrative record in accordance with 19 CFR § 351.224(c)(3), which states that the Department will not consider replies to ministerial error comments made in connection with a preliminary determination.[494] The Department's rejection of Fine Furniture's submission was based on a finding that the submission, in its entirety, constituted an impermissible reply to a ministerial error comment made in connection with a preliminary determination and, as such, could not be considered in this investigation. The Act imposes no requirement that the Department retain or use submissions that contain improperly filed information. To the contrary, the Department's regulations require the Department to return such unsolicited information to the submitting party and prohibits the Department from considering or otherwise using rejected information.[495]

We further disagree with Fine Furniture's allegation that its submission, in whole or in part, should remain on the record as timely filed factual information. In rejecting Fine Furniture's submission, the Department did not need to evaluate whether the information was new factual information. As explained above, the Department properly rejected Fine Furniture's entire submission in accordance with 19 CFR § 351.224(c)(3) on June 10, 2011. Moreover, as Fine Furniture states in its brief, it was aware of the deadline for the submission of new factual information at the time it filed its submission; however, it did not request an extension of the deadline for the submission of new factual information.

Citing to 19 CFR § 351.104, Fine Furniture asserts that despite the Department's rejection, its submission remained on the record and therefore should be used to calculate its own margin because it represents the best information available for ensuring that the Department's margin calculation is calculated as accurately as possible. First, Fine Furniture misinterprets the Department's regulation. In its regulations, the Department explains that, when material is returned, "the official record will include a copy of a returned document, solely for purposes of establishing and documenting the basis for returning the document to the submitter.[496] In fact, the regulations explicitly state that the Department "will not use factual information, written argument, or other material that the Secretary returns to the submitter."[497] Therefore, Fine Furniture's argument that its rejected information is the "best available information" fails.

Furthermore, even if the Department had not rejected the information as impermissible reply to a ministerial error comment, the Department does not find that Fine Furniture's calculation, which cannot be analyzed or further scrutinized by the Department because of resource restraints,

[494] *See* Memorandum regarding: Rejection of Fine Furniture's Submission, dated June 10, 2011.
[495] *See, e.g.*, 19 CFR § 351.302(d); 19 CFR § 351.104(a)(2).
[496] 19 CFR § 351.104(a)(2)(ii).
[497] *Id.* at 19 CFR § 351.104(a)(2)(i).

constitutes the best available information to determine a margin for Fine Furniture. The Department also disagrees with Fine Furniture's claim that it reduced the administrative burden associated with calculating an individual dumping margin by submitting its own calculation for the Department's review. The Department lacked the administrative resources to identify inaccuracies or deficiencies in any of the production or sales data Fine Furniture relied on in its calculation, nor was the Department able to verify this information. The presence of an interested party's self-calculated margin on the record of this investigation would do little to relieve the Department of the administrative burden required to analyze the data underlying the margin calculation.

For the foregoing reasons, the Department has neither calculated an individual dumping margin for Fine Furniture nor accepted its June 6, 2011, ministerial error reply.

RECOMMENDATION:

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

AGREE_____ DISAGREE_____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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Date

Table of Shortened Citations

Short Citation	**Full Citation**
Agricultural Policies (1985)	Alex F. McCall and Timothy E. Jostling, *Agricultural Policies and World Markets*, MacMillan Pub. Co., 1985
Aluminum Extrusions	*Aluminum Extrusions From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403 (November 12, 2010) and accompanying IDM
Antidumping Proceedings (December 27, 2006)	*Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006)
Appellate Body Report, WT/DS 379/AB/R at paragraph 605	*Appellate Body Report, United States-Definitive Antidumping and Countervailing Duties on Certain Products from China*, WT/DS 379/AB/R (March 25, 2011) at paragraph 605
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Carrier Bags/PRC (February 11,	*Polyethylene Retail Carrier Bags from the People's*

2009)	*Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009), and accompanying IDM
Carrier Bags/Taiwan (March 26, 2010) IDM at Comment 1	*Polyethylene Retail Carrier Bags From Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 *(*March 26, 2010*)* and accompanying IDM at Comment 1
Cased Pencils PRC	*Certain Cased Pencils From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order*, 76 FR 12323, 12324 (March 7, 2011).
Catfish Farmers	*Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362 (ClT 2009)
Central Bank of Denver, 511 U.S. at 176-177	*Central Bank of Denver v. First Interstate Bank*, 511 U.S. at 164, 176-177 (USSC 1994)
Certain Lined Paper	*Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006).
Chlorinated Isocyanurates (May 10, 2005) IDM at Comment 3.	*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 IDM.
Chlorinated Isocyanurates (May 10, 2005) IDM at Comment 3.	*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 IDM.
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Circular Welded Carbon-Quality Steel Pipes/PRC ITC Preliminary Report (07/2007)	*Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, ITC Preliminary Report*, (Publ. 3938 July 2007), at pages V-12 ((Table V-3) V-14 (Table V-5), and V-19
Citric Acid	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 unpublished issues and decisions memorandum at Comment 7.

Coated Paper/Indonesia (September 27, 2010)	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010), and accompanying IDM
Coated Paper/Korea (October 25, 2007)	*Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007)
Coated Paper/PRC (September 27, 2010) IDM at Comment 2b and Comment 3	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010) and accompanying Issue and Decisions Memorandum at Comment 2b and Comment 3.
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Crawfish/China (April 17, 2007)	*Freshwater Crawfish Tailmeat from the People's Republic of China: Final Results of Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007), and accompanying IDM
CTL Carbon Steel Plate/Romania	*Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying IDM
Diamond Sawblades (May 22, 2006)	*Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*,71 FR 29303 (May 22, 2006) and accompanying IDM.
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Dole Food, 538 U.S. at 476	*Dole Food Co. v. Patrickson*, 538 U.S. at 468, 476 (USSC 2003)
Dorbest (2006)	*Dorbest Ltd. v. United States*, 30 C.I.T. 1671 (CIT 2006)
Dorbest (2010)	*Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010)
Dorbest, 462 F. Supp. 2d at 1300-01	*Dorbest Limited, et al. v. United States*, 462 F. Supp. 2d at 1262, 1300-01 (CIT 2006)
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	U.S. at 293, 302 (USSC 2003)
Final Wire Rod/Korea	*Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 6528 (February 12, 2007)
Fine Furniture's Prelim SV Submission	Fine Furniture (Shanghai) Limited's Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China - (1) Comments on Surrogate Country Selection; (2) Submission of Pub1icly Available Surrogate Value Information, dated March 15, 2011
Fine Furniture's SV Submission	Fine Furniture (Shanghai) Limited's Submission of Publicly Available Information to Value Factors, dated July 5, 2011
FMTC/PRC (April 24, 2002)	*Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002) and accompanying IDM at Comment 9
FMTC/PRC (January 18, 2011)	*Folding Metal Tables and Chairs From the People's Republic of China: Final Results of 2007-2008 Deferred Antidumping Duty Administrative Review and Final Results of 2008-2009 Antidumping Duty Administrative Review*, 76 FR 2883 (January 18, 2011) and accompanying IDM at Comment 1
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Georgetown Steel, F.2d at 1310	*Georgetown Steel Corp. v. United States*, 801 F.2d at 1308, 1310 (CAFC 1986)
Glycine	*Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying IDM
Glycine (January 31, 2001)	*Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review*, 66 FR 8383 (January 31, 2001) and accompanying IDM.
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ITC Section 332 Report	*Wood Flooring and Hardwood Plywood: Competitive Conditions Affecting the U.S. Industries*, Inv. No. 332-48, USITC Pub. 4031 (August 2008).
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Kitchen Shelving	*Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591 (March 5, 2009) and accompanying IDM
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Labor Memo	Memorandum regarding: Antidumping Investigation on Multilayered Wood Flooring from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratio Adjustments, dated July 8, 2011
Labor Methodology	*Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of*

	Production: Labor, 76 FR 36092 (June 21, 2011)
Layo Wood C and D Responses	Layo Wood's Section C and D Questionnaire Responses, dated February 23, 2011
Layo Wood Prelim SV Submission	Layo Wood's Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Selection Comments, dated March 15, 2011
Layo Wood SV Rebuttal Resubmission	Layo Wood's Multilayered Wood Flooring from the People's Republic of China: Resubmission of July 19, 2011, Surrogate Valuation Information for Final Determination, dated August 3, 2011
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Lightweight Thermal Paper	*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 Decisions Memorandum
Lock Washers/PRC (May 27, 2010)	*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), and accompanying IDM
LTP	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 Decisions Memorandum at Comment 9.
Lumber/Canada (December 12, 2005)	*Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005) and accompanying IDM at Comment 5
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Mushrooms/China (October 19, 2005)	*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), unchanged in *Certain Preserved Mushrooms from the People's Republic of China: Notice of Final Results of the Eighth New Shipper Review*, 70 FR 60789 (October 19, 2005)
Nails/PRC (June 16, 2008) IDM at Comments 3-6	*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 IDM at Comments 3-6
Narrow Woven Ribbons	*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), and accompanying IDM
Nation Ford Chem. Co., 166 F.3d at 1377.	*Nation Ford Chem. Co. v. United States*, 166 F.3d 1373,1377 (Fed. Cir. 1999).
NSK, 510 F.3d at 1375	*NSK Ltd. v. United States*, 510 F.3d at 1375 (CAFC 2007)
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OCTG (April 19, 2010) IDM at Comment 13.	*Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying IDM.
OTR Tires/PRC (July 15, 2008)	*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), and accompanying IDM
Persulfates (February 9, 2005) IDM at Comment 1.	*Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 R 6836 (February 9, 2005) and accompanying IDM.
PET Film	Polyethylene Terephthalate Film, Sheet, and Strip from

	the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008) and accompanying IDM at Comment 2
PET Film/India	*Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review*, 70 FR 8072 (Feb. 17, 2005) and accompanying IDM
Petitioner's Final SV Submission	Petitioner's Surrogate Value Submission in the Antidumping Investigation of Multilayered Flooring from the People's Republic of China, dated August 3, 2011
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Prelim SV Memo	Memorandum to the File, from Brandon Farlander, regarding: Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Surrogate Value Memorandum, dated May 19, 2011
Prelim Wire Rod/Korea	*Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of* *Antidumping Duty Administrative Review*, 71 FR 59739, 59739-59740 (October 11, 2006)
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Retail Carrier Bags	*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 IDM
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SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994)
SAA (1979)	Trade Agreements Act of 1979, Report of the Committee on Finance United States Senate on H.R. 4537, July 17, 1979, 96th Cong., 1st Sess. Rep. No. at 96-249; Trade Agreements Act of 1979, Statement of Administrative Action, H. Doc. No. 96-153, Part II (1979), at 412.
Samling Group C and D Responses	Samling Group's Section C and D Questionnaire Responses, dated March 1, 2011
Samling Group Labor Comments	The Samling Group's Comments on Labor Wage Rate Calculations in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China, dated July 21, 2011
Samling Group Prelim SV Submission	Samling Group Surrogate Value Submission in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China, dated March 15, 2011
Samling Group Proprietary Memorandum	Samling Group Proprietary Issue Analysis Memorandum for the Final Determination in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China
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Sawblades/China (May 22, 2006)	*Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*,71 FR 29303 (May 22, 2006), and accompanying IDM
Scope Memo	Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Susan Kuhbach, Director, Office 1, and Nancy Decker, Program Manager, Office 1, from Joshua Morris, International Trade Compliance Analyst, Office 1, dated May 19, 2011, "re**:** Antidumping and Countervailing Duty Investigations: Multilayered Wood Flooring from the People's Republic of China, subject: Scope"
Sebacic Acid/PRC (December 16,	*Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative*

2004)	*Review*, 69 FR 75303 (December 16, 2004), and accompanying IDM
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SV Rebuttal Extension Letter	Letter to All Parties regarding: Extension requests for deadlines for surrogate value rebuttal comments and revised wage rate methodology, dated July 14, 2011
SV Rebuttal Rejection Letters	Surrogate Value Rebuttal Rejection Letters from the Department to Francis Sailer, Gregory Menegaz, Jeffrey Neeley, and Mark Ludwikowski, dated August 1, 2011
SV Rebuttal Rejection Letters	Surrogate Value Rebuttal Rejection Letters from the Department to Francis Sailer, Gregory Menegaz, Jeffrey Neeley, and Mark Ludwikowski, dated August 1, 2011
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Taian Ziyang (2011)	*Taian Ziyang Food Company, Ltd. v. United States*, Slip Op. 11-88 (CIT 2011)
Tianjin Mach.	*Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F.Supp. 1008 (CIT 1992)
TIJID	*TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286 (ClT 2005)
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Tires/PRC (February 20, 2008)	*Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9287 (February 20, 2008)
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U.S. Steel, 15 F. Supp. 2d at 900, reversed on other grounds, *U.S. Steel Group*, 225 F.3d at 1284-1285	*U.S. Steel Group v. United States*, 15 F. Supp. 2d at 892, 900 (CIT 1998), reversed on other grounds, *U.S. Steel Group v. United States*, 225 F.3d at 1284-1285 (CAFC 2000)
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Yuhua Affiliation Memo	Memorandum regarding: Antidumping Investigation of Multilayered Wood Flooring from the People's Republic of China: Zhejiang Yuhua Timber Co., Ltd. Affiliation, dated May 19, 2011
Yuhua C and D Responses	Yuhua's Section C and D Questionnaire Responses, dated February 22, 2011
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Yuhua Prelim SV Rebuttal	Yuhua's Multilayered Wood Flooring from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection and Surrogate Values, dated March 21, 2011