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September 16, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Issues and Decision Memorandum for the Final Determination

SUMMARY

We have analyzed the comments submitted in the investigation of hardwood and decorative plywood from the People's Republic of China ("PRC"). As a result of this analysis, we have made changes to the Preliminary Determination.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

The Department of Commerce ("Department") published its Preliminary Determination of sales at less than fair value ("LTFV") on May 3, 2013. From May 27, through June 12, 2013, the Department conducted verifications of Sanfortune,[2] the Jiangyang Group[3] and Far East American, Inc. ("Far East") (the Jiangyang Group's U.S. affiliate), and released its verification reports for these companies on June 24, 2013.[4] Timely requests for a public hearing were filed by multiple interested parties between May 31 and June 3, 2013.

[1] See Hardwood and Decorative Plywood from the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013) ("Preliminary Determination") and accompanying Decision Memorandum ("Preliminary Decision Memo").
[2] Linyi Sanfortune Wood Co., Ltd.
[3] Xuzhou Jiangyang Wood Industries Co., Ltd., and Xuzhou Jiangheng Wood Products Co., Ltd.
[4] See Memorandum to the File from Kabir Archuletta, Senior International Trade Compliance Analyst, Office 9, and Katie Marksberry, Senior International Trade Compliance Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9, "Verification of the Sales and Factors Responses of Xuzhou Jiangyang Wood Industries Co. Ltd and Xuzhou Jiangheng Wood Products Co. Ltd. in the Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China" (June 21, 2013) ("Jiangyang Verification Report"); Memorandum to the File from Katie Marksberry, Senior International Trade Compliance Analyst, Office 9, and

On June 17, 2013, Petitioners,[5] Sanfortune and the Jiangyang Group, and Dehua TB Industry & Trade Limited and Zhejiang Dehua TB Import & Export Co., Ltd (collectively, "Dehua TB") submitted surrogate value ("SV") information for the record, and Petitioners, Sanfortune and Jiangyang Group, and Dehua TB submitted rebuttal comments to this information on June 27, 2013.

The Department set a separate briefing schedule for parties to address scope-related issues which pertain to both the antidumping and countervailing duty investigations. The Department received scope-related case briefs from the following interested parties: Petitioners; Anji Hefeng Bamboo & Wood Company, BR Custom Surface, ZT Industry, Co., Ltd., and Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd, and Zhejiang Goldentouch Bamboo Technology Co., Ltd. (collectively, "Bamboo Flooring Companies"); Elberta Crate & Box Company ("Elberta"); Lumber One Co., Georgia Inc. ("Lumber One); Lumber Liquidators Services LCC ("Lumber Liquidators"); Teregren LLC ("Teregren"); Smith & Fong Company ("Smith & Fong"); and Cali Bamboo LLC. The Department received rebuttal briefs regarding scope-related issues from the following interested parties: Petitioners; the China National Forestry Products Industry Association ("CNFPIA"); Far East; Holland Southwest International, Inc. ("Holland Southwest"); Shelter Forest International ("Shelter Forest"); Taraca Pacific Inc. ("Taraca Pacific"); and UFP Purchasing Inc. ("UFP Purchasing"). On June 18, 2013, the Department held a public hearing limited to issues raised in scope-related case and rebuttal briefs.

On July 8, 2013, the Department received case briefs on general case issues not relating to the scope of the investigations from the following interested parties: Petitioners; Dehua TB et al.; Anhui Tiansen et al.;[6] Senda Fancywood et al.;[7] Hardwood Specialty et al.;[8] Lianyungang

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Kabir Archuletta, Senior International Trade Compliance Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9, "Verification of the Sales and Factors Responses of Linyi Sanfortune Wood Co., Ltd. in the Investigation of Hardwood and Decorative Plywood from the People's Republic of China" (June 21, 2013) ("Sanfortune Verification Report"); see also Memorandum to the File from Kabir Archuletta, Senior International Trade Compliance Analyst, Office 9, and Katie Marksberry, Senior International Trade Compliance Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9 "Verification of the CEP Sales Response of Xuzhou Jiangyang Wood Industries Co. Ltd and Xuzhou Jiangheng Wood Products Co. Ltd. in the Investigation of Hardwood and Decorative Plywood from the People's Republic of China" (June 24, 2013) ("Far East Verification Report").

[5] The Coalition for Fair Trade of Hardwood Plywood. See also "Petition for the Imposition of Antidumping and Countervailing Duties: Hardwood Plywood from the People's Republic of China" (September 27, 2012) ("PRC Plywood Petition") at 2 n1.

[6] Anhui Tiansen Trading Co., Ltd., Anhui Wanrnu Wood Co., Ltd., Celtic Co., Ltd., Huainan Mengping Import and Export Co., Ltd., Jiangsu Top Point International Co., Ltd., Jiangsu Vermont Wood Products Co. Ltd., Jiaxing Brilliant Import & Export Co., Ltd., Jiaxing Gsun Imp. & Exp. Co., Ltd., Jiaxing Hengtong Wood Co., Ltd., Lianyungang Penghai International Trading Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi King Import and Export Co., Ltd., Linyi Mingzhu Wood Co., Ltd., Linyi Tianhe Wooden Industry Co., Ltd., Shandong Qishan International Co., Ltd., Shanghai Aviation Import & Export Co., Ltd., Shanghai Futuwood Trading Co., Ltd., Sumec International Technology Co., Ltd., Suqian Hopeway International, Trade Co., Ltd., Suzhou Fengshuwan Import and Exports Trade Co., Ltd., Xuzhou EKEA International Trade Co., Ltd., Xuzhou Timber International Trade Co., Ltd., Yishui Hongtai Wood-made Co., Ltd., Deqing Dajiang Import and Export Co., Ltd., and Xuzhou Baoqi Wood Product Co., Ltd.

[7] Shanghai Senda Fancywood Industry Co., Pacific Plywood Co., Ltd., JOC Yuantai International Trading Co., Ltd., Siyang Enika International Trade Co., Ltd., Shanghai S&M Trade Co., Ltd. and Smart Gift International

[8] Hardwood Specialty Products USLP, Interglobal Forest, Taraca Pacific, Inc., and USPly LLC, U.S. importers of hardwood and decorative plywood from China, and Linyi Tianhe Wooden Industry Co., Ltd. and Yinhe Machinery Chemical Limited Company of Shandong Province.

Yuantai International Trade Co., Ltd. ("Lianyungang Yuantai"); Sanfortune and the Jiangyang Group (collectively, "Mandatory Respondents"); Liberty Woods et al.;[9] Jiangsu Dilun et al.;[10] Shamrock Building Materials, Inc. ("Shamrock"); Shelter Forest; and Zhejiang Shenghua Yunfeng Import and Export Co., Ltd. ("Zhejiang Shenghua"). On July 15, 2013, the Department received rebuttal briefs on general case issues from the following interested parties: Petitioners; Dehua TB et al.; Mandatory Respondents; and Liberty Woods et al. On July 18, 2013, the Department held a public hearing limited to issues raised in the general case and rebuttal briefs.

Non-market Economy Country

The Department considers the PRC to be a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department continues to treat the PRC as an NME for purposes of this final determination.

Surrogate Country

In the Preliminary Determination, we stated that we had selected the Republic of the Philippines ("the Philippines") as the appropriate surrogate country to use in this investigation for the following reasons: (1) it is at a level of economic development comparable to that of the PRC; (2) it is a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act; and (3) we have reliable data from the Philippines that we can use to value the factors of production ("FOPs").[11] For the final determination, we analyzed the comments received on surrogate country selection and have changed our surrogate country selection from the Philippines to the Republic of Bulgaria ("Bulgaria"), as explained below in Comment 7.

Separate Rate Companies

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty ("AD") rate. It is the Department's policy to assign all exporters of the merchandise under consideration in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the Preliminary Determination, we found 101 companies and the two mandatory respondents (collectively, the "Separate Rate Applicants") demonstrated their eligibility for separate rate status.[12] The Department continues to find that the evidence placed on the record of this

[9] Liberty Woods International, Inc., Wood Brokerage International, Patriot Timber Products, Inc., Northwest Hardwoods Inc., Canusa Wood Products Limited, American Pacific Plywood Inc., McCorry & Co. Ltd., Holland Southwest International Inc., Ike Trading Co., Ltd. and Concannon Corporation, Inc., d/b/a Concannon Lumber Company

[10] Jiangsu Dilun International Trading Co., Ltd.; Jiangsu Eastern Shengxin International Co. Ltd.; Larkcop International Co., Ltd; Pizhou Hengxing International Trade Co. Ltd.; Shanghai Luli Trading Co., Ltd.; Wenzhou Eita Import & Export Co., Ltd.; Xuzhou Antop International Trade Co., Ltd.; Xuzhou Chengxin Wood Co., Ltd.; Xuzhou Hansun Import & Export Co., Ltd.; Xuzhou Hongda Wood Co., Ltd.; Xuzhou Runjin Import & Export Trade Co., Ltd.; Xuzhou Shenghe Wood Co., Ltd.; Xuzhou Sincere Wood Co., Ltd.; Xuzhou Tianshan Wood Co., Ltd.; Xuzhou Weilin Wood Co., Ltd., and Xuzhou Zhongda Building Materials Co.

[11] See Preliminary Determination and accompanying Decision Memorandum at 9-11.

[12] See Preliminary Determination and accompanying Decision Memorandum at 12-17.

investigation by the Separate Rate Applicants that were granted separate rate status in the Preliminary Determination demonstrates both de jure and de facto absence of government control with respect to each company's respective exports of the merchandise under investigation. Additionally, as explained below, the Department has determined that an additional four companies have demonstrated their eligibility for separate rate status.[13] A full listing of the companies receiving a separate rate for this final determination is at Appendix 1.

The separate rate is normally determined based on the weighted-average of the calculated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, de minimis, or based entirely on facts available.[14] For this final determination, we have calculated weighted-average dumping margins which are above the de minimis threshold and which are not based on total facts available for both mandatory respondents. Because there are only two relevant weighted-average dumping margins for this final determination, using a weighted-average of these two rates risks disclosure of business proprietary information data. Therefore, the Department has assigned a weighted-average margin using the publicly ranged values submitted by Mandatory Respondents to the separate rate companies for this final determination.[15] Additionally, the Department has addressed the comments received in case and rebuttal briefs with regard to the rate assigned to separate rate companies in the Preliminary Determination below at Comment 1.

Determination of the Comparison Method

The Department preliminarily determined that application of the differential pricing analysis was appropriate for Sanfortune and the Jiangyang Group and, accordingly, applied the "mixed alternative" method for the Preliminary Determination.[16] For this final determination, the Department has again applied the differential pricing analysis as described in the Preliminary Determination to determine the appropriate comparison method.[17] Based on the results of the differential pricing analysis for the Jiangyang Group, the Department finds that while a pattern of export prices (or constructed export prices) exists for comparable merchandise that differs significantly among purchasers, regions, or time periods, the average-to-average method can appropriately account for such differences.[18] Additionally, based on the results of the differential pricing analysis for Sanfortune, the Department finds that no pattern of export prices exists for comparable merchandise that differs significantly among purchasers, regions, or time

[13] See Comment 20.
[14] See section 735(c)(5)(A) of the Act.
[15] See Memorandum to the File from Katie Marksberry, Case Analyst, Office 9, AD/CVD Operations, Import Administration, "Antidumping Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Calculation of the Final Margin for Separate Rate Recipients," dated September 16, 2013. This memo contains the Department's comparison of (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly ranged values for merchandise under consideration. Based upon that comparison, the Department determines that, (C), a weighted-average using each company's publicly ranged values is closest to the weighted-average of margins calculated using business proprietary information and, thus, is the most appropriate rate for use in this final determination.
[16] See Preliminary Determination at 28-31.
[17] See id.
[18] See Memorandum to the File from Kabir Archuletta, International Trade Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9, "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Final Analysis Memo for Jiangyang Group" dated concurrently with this memorandum ("Jiangyang Final Analysis Memo").

periods. Therefore, we have applied the standard methodology.[19] The Department has addressed the comments received in the case and rebuttal briefs with regard to the differential pricing analysis, as applied in the Preliminary Determination and this final determination, below at Comment 5.

Affiliation/Single Entity

Based on the evidence on the record in this investigation, including information submitted by Jiangyang in its questionnaire responses, the Department continues to find affiliation between Jiangyang and Xuzhou Jiangheng Wood Products Co. Ltd. ("Jiangheng"), producers of merchandise under consideration, and Far East pursuant to section 771(33)(E) and (F) of the Act for this final determination. Further, based on the evidence presented in Jiangyang's questionnaire responses, we continue to find that Jiangyang and Jiangheng should be treated as a single entity for the purposes of this investigation, pursuant to 19 CFR 351.401(f), because the companies have production facilities for identical products and there exists a significant potential for manipulation of price or production.[20]

Application of Facts Available and Adverse Facts Available

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As discussed in Comment 12 below, we have determined to apply partial adverse facts available ("AFA") with respect to the Jiangyang Group's unreported sales channel.

[19] See Memorandum to the File from Katie Marksberry, International Trade Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9, "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Final Analysis Memo for Linyi Sanfortune Wood Co., Ltd." dated concurrently with this memorandum ("Sanfortune Final Analysis Memo").
[20] See Preliminary Decision Memo at 21.

PRC-Wide Entity

In the Preliminary Determination, the Department determined that during the period of investigation ("POI"), in addition to Linyi Junjie Wood Plant ("Linyi Junjie"), there were other PRC exporters of the merchandise under consideration that failed to timely respond to the Department's requests for information and did not establish that they were separate from the PRC-wide entity.[21] Thus, the Department has found that these PRC exporters are part of the PRC-wide entity and the PRC-wide entity has not responded to our requests for information. Because the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

The Department also determines that because the PRC-wide entity did not respond to our request for information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department finds that in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity. Because the Department begins with the presumption that all companies within an NME country are subject to government control, and because only the Separate Rate Applicants and Mandatory Respondents have overcome that presumption, the Department is applying a single AFA rate as the weighted-average dumping margin to all other exporters of subject merchandise from the PRC. Such companies have not demonstrated entitlement to a separate rate.[22]

Selection of the Adverse Facts Available Rate for the PRC-Wide Entity[23]

In determining a rate for AFA, the Department's practice is to select a rate that is sufficiently adverse "as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[24] Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[25] In deciding which facts to use as AFA, section 776(c) of the Act and 19 CFR 351.308 authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.[26] In this investigation, the highest petition dumping margin is 321.68 percent.[27]

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[21] See Preliminary Determination and Preliminary Decision Memo at 18-19.

[22] See, e.g., Notice of Final Determination of Sales at Less Than Fair Market Value: Synthetic Indigo From the People's Republic of China, 65 FR 25706, 25707 (May 2, 2000).

[23] Comments from interested parties pertaining to the selection of the PRC-wide rate are addressed below at Comment 3.

[24] See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

[25] See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005) (quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep No. 103-316 at 870 (1994) ("SAA")).

[26] See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (April 21, 2003).

[27] See Hardwood and Decorative Plywood From the People's Republic of China: Initiation of Antidumping Duty Investigation, 77 FR 65172, 65175 (October 25, 2012).

This rate is higher than any of the weighted-average dumping margins calculated for the companies individually examined. However, as explained below, we have determined to use the highest calculated control number ("CONNUM")-specific margin as the AFA rate to apply to the PRC-wide entity.[28]

Corroboration of Information[29]

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."[30]

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[31] The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[32] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

As noted above, to determine the appropriate rate for the PRC-wide entity based on AFA, the Department first examined whether the highest petition margin was less than or equal to the highest calculated margin, and determined that the petition margin of 321.68 percent was the higher of the two. Next, in order to corroborate 321.68 percent as the potential PRC-wide rate, we first compared it to 121.65 percent, the highest CONNUM-specific margin calculated for one of the mandatory respondents.[33] The highest CONNUM-specific margin demonstrates that the petition rate of 321.68 percent does not have probative value. Therefore, we have determined that the 321.68 percent rate does not corroborate and, therefore, we will instead use the highest calculated CONNUM-specific margin of 121.65 percent as the PRC-wide rate.[34]

In selecting the highest calculated CONNUM-specific margin to use as the PRC-wide rate, the Department analyzed the underlying transaction(s) resulting in the 121.65 percent AD margin and affirmed that this rate is neither unusual in terms of transaction quantities nor otherwise

[28] We note that this AFA rate has changed since the Preliminary Determination as a result of changes to the surrogate country selected for this final determination and the consequent changes to surrogate values. See Preliminary Determination, 77 FR at 25952; see also below at Comments 7-11.
[29] Comments from interested parties pertaining to the corroboration of the PRC-wide rate are addressed below at Comment 3.
[30] See SAA at 870.
[31] See id.
[32] See id.
[33] See Sanfortune Final Analysis Memo, at Attachment II: Output.
[34] See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77FR 46044, 46050-51 (August 2, 2012); see also High Pressure Steel Cylinders From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 76 FR 77964, 77970-71 (December 15, 2011) ("PRC Steel Cylinders LTFV Prelim"), unchanged in High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 26739, 26742 (May 7, 2012).

aberrational.[35] In terms of transaction quantities, there are significant numbers of sales made by both respondents with quantities similar to that in the underlying transaction(s).[36] Additionally, the underlying sale(s) is(are) not unusual in terms of the product characteristics. Further, the rate is otherwise reasonable and supported by substantial evidence because it represents an actual rate at which a cooperating respondent sold the merchandise under consideration during the POI [37] and "does not lie outside the realm of actual selling practices."[38] If during the POI, the cooperating respondent sold the merchandise under consideration at the rate the Department selected, the Department may reasonably determine that a non-responsive, or uncooperative, respondent could have made all of its sales at the same rate.[39] Therefore, we have preliminarily determined that Sanfortune's CONNUM-specific margin of 121.65 percent, based on data in the current investigation, is not aberrational and is a reasonable AFA rate for the PRC-wide entity for this final determination. The PRC-wide rate applies to all entries of merchandise under consideration except for entries from Sanfortune, Jiangyang, and the producers/exporters receiving a separate rate, as stated above.

Section 777A(f) of the Act

In applying section 777A(f) of the Act, the Department has examined (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value ("NV") determined pursuant to section 773(c) of the Act, has increased the weighted average dumping margin for the class or kind of merchandise.[40] For a subsidy meeting these criteria, the statute requires the Department to reduce the AD by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[41] In conducting this analysis, the Department has concluded that concurrent application of NME ADs and countervailing duties ("CVD"s) does not necessarily and automatically result in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute. As a result of our analysis in this case, as discussed below, the Department is not making adjustments pursuant to section 777A(f) of the Act to the AD cash deposit rate found for each respondent in this investigation for this final determination.

[35] See, e.g., Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review, 75 FR 7563 (February 22, 2010), and the accompanying Issues and Decision Memorandum; Hyundai Elec. Indus. Co., Ltd. v United States, 395 F. Supp. 2d 1231, 1235-36 (CIT 2005); F.lli De Cecco Di Filippo Fara S. Martino S.p.A v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) ("F.lli De Cecco").
[36] See Jiangyang Final Analysis Memo at Attachment II; Sanfortune Final Analysis Memo at Attachment II.
[37] See Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1347-48 (CIT 2005) ("Shanghai Taoen") (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).
[38] See KYD, Inc. v. United States, 607 F.3d 760, 767 (Fed. Cir. 2010).
[39] See PRC Steel Cylinders LTFV Prelim, 76 FR at 77970-71.
[40] See section 777A(f)(1)(A)-(C) of the Act.
[41] See section 777A(f)(1)-(2) of the Act.

We note that due to the timelines in an LTFV investigation, and the fact that this is only the third time that the Department is conducting an analysis under section 777A(f) of the Act,[42] the Department continues to refine its practice in applying the new law. This final determination is based on information on the administrative record provided by Mandatory Respondents in this investigation. Specifically, both Jiangyang and Sanfortune reported that while electricity subsidies affect their cost of manufacturing ("COM"), both companies noted that electricity costs account for a very small portion of overall COM.[43] Both companies also reported that the other subsidy programs under investigation in the concurrent CVD investigation (e.g., tax programs, value-added tax/tariff exemptions, etc.) did not impact their COM.[44] With respect to cost-linked price changes, neither Jiangyang nor Sanfortune demonstrated a link between electricity cost and prices.[45] The Department's questionnaire indicated that the relevant time period must include the POI but may extend beyond the POI as necessary to answer the questions in full.[46] Because neither respondent provided such evidence with respect to electricity costs, and there is no information on the record of this proceeding which would cause the Department to reconsider its Preliminary Determination with regard to this analysis, the Department is not applying an adjustment under section 777A(f) of the Act for this final determination.

DISCUSSION OF THE ISSUES

Comment 1: Calculation of the Separate Rate

Lianyungang Yuantai, Dehua TB et al., Shamrock, Shelter Forest, and Senda Fancywood et al., Zhejiang Shenghua, Anhui Tiansen et al., Liberty Woods et al., and Jiangsu Dilun et al.'s Case and Rebuttal Briefs:

- To the extent that the final determination presents a result similar to the Preliminary Determination, the use of the PRC-wide rate in calculating the separate rate is unreasonable.
- This case presents the following unique circumstances: 1) both of the two mandatory respondents received de minimis margins in the Preliminary Determination; 2) seven companies requested to be examined as voluntary respondent by the Department; and 3) two voluntary respondents submitted full responses to the Department's questionnaires.
- As the Department explicitly stated that the two selected mandatory respondents were representative, it therefore should consider the de minimis rates calculated for these respondents to be representative of the separate rate respondents.

[42] See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China, 77 FR 52683, 52686 (August 30, 2012); Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Issue 1.

[43] See Letter from Jiangyang to the Secretary of Commerce "Double Remedies Questionnaire Response" (February 8, 2013) ("Jiangyang Subsidy Response"), at 3-4; Letter from Sanfortune to the Secretary of Commerce "Double Remedies Questionnaire Response" (February 8, 2013) ("Sanfortune Subsidy Response"), at 3.

[44] See Jiangyang Subsidy Response, at 2; Sanfortune Subsidy Response, at 2; see also Hardwood and Decorative Plywood From the People's Republic of China: Amended Preliminary Countervailing Duty Determination; and Alignment of Final Determination With Final Antidumping Determination, 78 FR 16250 (March 14, 2013).

[45] See section 777A(f)(1)(B) of the Act

[46] See Letter from Catherine Bertrand, Program Manager, Office 9, to Jiangyang "Double Remedies Supplemental Questionnaire" (January 25, 2013); Letter from Catherine Bertrand, Program Manager, Office 9, to Sanfortune "Double Remedies Supplemental Questionnaire" (January 25, 2013), emphasis added.

- It is unreasonable to include a punitive AFA rate in the calculation of the separate rate for fully cooperative separate rate respondents, especially given the number of companies which requested the opportunity to be treated as full respondents.
- The Department is obligated by statute to make a finding of non-cooperation before it is permitted to exercise its authority to apply adverse inferences under 19 U.S.C 1677e(b). If the Department does make a finding of non-cooperation, it may use adverse inferences only against that party.[47]
- The Department did not make any finding of non-cooperation by any of the separate rate respondents. Thus, in including adverse inferences in the separate rate in the Preliminary Determination, the Department failed to fulfill the statutory prerequisite for applying AFA and unlawfully penalized companies that applied for and were granted separate rate status.
- Including the AFA PRC-wide margin at one third of the separate rate respondents' margin is tantamount to applying partial AFA to the separate rate respondents, which is unreasonable, and is not supported by law or statute.
- Subsequent to the Department's Preliminary Determination, the U.S. Court of Appeals for the Federal Circuit ("CAFC") ruled in Yangzhou Bestpak.[48] There, the Department calculated the margin for separate rates companies using a simple average of the de minimis margin of one cooperative mandatory respondent and the adverse facts available rate of one non-cooperative mandatory respondent, which was included in the PRC-wide rate. The CAFC rejected this methodology, finding that there was no basis to tie the rate assigned to separate rate respondents to their actual commercial activity.
- The facts of this case are no different. There is no evidence to tie the separate rate margin assigned to respondents in the Preliminary Determination to their actual commercial activity.
- In light of the CAFC decision in Yangzhou Bestpak, the Department cannot use the PRC-wide margin in its calculation of the margin for separate rate respondents.
- The Department is, under some circumstances, allowed to rely on an average that includes the facts available margin of an "individually investigated" company. However, in this case the there is no adverse facts available margin assigned to any company which could possibly be considered to have been "individually investigated." Rather the Department partially based the margin for cooperative companies on an AFA margin which was assigned to the PRC-wide entity, which was not individually examined.
- The Department has in the past calculated a separate rate based on zero and/or de minimis rates.[49] Additionally, the Court of International Trade ("CIT") has ruled that the Department "may not categorically exclude averaging the zero and de minimis rates received by all individually investigated respondents from the Department's consideration of reasonable methodologies for determining rates for companies not individually investigated."[50] Thus,

[47] Citing Zheiiang Dunan Hetian Metal Co. v. United States, 652 F.3d 1333, 1346 (Fed. Cir. 2011); Nippon Steel Corp. v. United States, 337 F.3d 1373, 1381 (Fed. Cir. 2003) ("Nippon Steel"); and E. Sea Seafoods LLC v. United States, 703 F. Supp. 2d 1336, 1354 n. I5 (CIT 2010).

[48] See Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States, 716 F.3d 1370 (Fed. Cir. 2013) ("Yangzhou Bestpak").

[49] Citing Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review, 73 FR 32678 (June 10, 2008) and Accompanying Issues and Decision Memorandum at Comment 1; and Honey from Argentina: Final Results of Antidumping Duty Review, 70 FR 19926 (April 15, 2005).

[50] See Amanda Foods (Vietnam) Ltd. v. United States, Slip Op. 201 1-39,2011 Ct. Intl. Trade LEXIS 37 at 12 (Ct. Int'l Trade Apr. 14,2011) (citing Amanda Foods (Vietnam) Ltd. v. United States, 35 CIT, 714 F. Supp. 2d 1282, 129 1-92 (CIT 2010).

the Department should not preclude the consideration of these rates for the final determination in this proceeding.

- The Department has reasonable alternatives available for calculating the separate rate for the final determination. Further, there is no evidence on the record that the estimated rates for the separate rates companies would be anything but zero. The Department's regulations provide that a company receiving an individual zero or de minimis margin in an investigation must be excluded from an antidumping order. Alternatively, the Department could calculate a cash deposit rate of zero for the separate rate respondents.
- The Department should have calculated a zero or de minimis separate rate for the Preliminary Determination, therefore 1) no suspension of liquidation instructions should have been issued; 2) no AD cash deposit instructions should have been issued; and 3) the AD deposit assessment cap during the preliminary period should be zero rather than 22.14 percent.
- The Department should retroactively correct the suspension of liquidation and duty deposit instructions regardless of whether the two mandatory respondents receive zero or de minimis margins or affirmative margins for the final determination.
- The Department should rescind the preliminary suspension of liquidation and duty deposit instructions retroactively, set the assessment cap for merchandise entered during the preliminary period to zero, and refund all AD deposits posted by the separate rate respondents.
- The Department's separate rate practice should be abandoned. The Department should assign individual AFA margins to the separate rate companies which failed to respond to the separate rate questionnaire, but there is no evidence that there are other producers of subject merchandise that failed to respond to questionnaires issued by the Department.
- The WTO Antidumping Agreement does not contain any provision allowing the Department to apply AFA to a country-wide entity, and as long as the Department does so, it is in violation of its obligations under the WTO Antidumping Agreement.[51]
- There is nothing reasonable about applying total AFA to the country-wide entity where there has been no showing that the entire country or its government failed to respond to the best of its ability or withheld information from the Department.
- The Department's presumption that "all firms within a NME are subject to government control and thus should all be assigned a single, countrywide rate unless a respondent can demonstrate an absence of both de jure and de facto control over its export activities," is contradicted by the Department's decision to change its practice concerning the application of countervailing duty laws.
- A major basis for the Department's conclusions and change in its practice concerning the application of CVD laws was a factual finding "that market forces now determine the prices of more than 90 percent of products traded in China."[52] Such a finding reverses any de facto presumption that PRC's government controls pricing.

[51] Citing European Communities - Definitive Antidumping Measures on Certain Iron or Steel Fasteners from China,WT/DS397/AB/R, July 15, 2011 and United States -Antidumping Measures on Certain Shrimp from Vietnam, WT /DS404/R, July 11, 2011.

[52] See Memorandum for David M. Spooner, Assistant Secretary for Import Administration; through Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Policy and Negotiations, Stephen J. Claeys, Deputy Assistant Secretary for AD/CVD Operations; John D. McInerney, Chief Counsel for Import Administration, Ronald K. Lorentzen, Director, Office of Policy, Albert Hsu, Senior Economist, Susan Kuhbach, Office Director- Office 1, from Shauna Lee-Alaia and Lawrence Norton Office of Policy, Import Administration, "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy" (March 29, 2007) at 4

- The Department's presumption that all firms within a NME are subject to government control and thus should all be assigned a single, country-wide rate in AD proceedings is the opposite of the findings that the Department used to justify bringing CVD cases.
- Thus, the Department should not apply the presumption of state control in this investigation but instead should be consistent with its findings used to justify bringing CVD cases and presume that no such state control exists unless record evidence shows otherwise.
- If the Department fails to otherwise calculate a zero dumping margin for the separate rate companies, then it must calculate separate dumping margins for companies which submitted complete and timely questionnaire responses to the Department, i.e., Zhejiang Dehua TB Import and Export Co., Ltd. and Shanghai Senda Fancywood Inc.
- The Department does not have any justification for not calculating an individual margin for these companies, and it is plainly unreasonable to calculate the margin for voluntary respondents in the same manner as the separate rate respondents, when it has all the information it needs to calculate individual dumping margins for these companies.
- Petitioners have failed to make a case for the continuation of the preliminary methodology because they have not demonstrated that any of the separate rate recipients have failed to cooperate.
- In the Department's recent determination in Diamond Sawblades,[53] the Department calculated dumping margins of zero for both mandatory respondents, and also calculated a rate of zero for the non-selected respondents in that review.
- The Department should issue a final determination with negative determinations with regard to dumping for all separate rates companies, due to Petitioners' inability to identify any evidence of dumping by these companies.

Petitioners' Case and Rebuttal Briefs:

- Should the Department calculate de minimis dumping margins for Mandatory Respondents for the final determination, it should employ the same methodology used in the Preliminary Determination to calculate the margin for the separate rate applicants because this methodology, applied under the circumstances presented by the Preliminary Determination, was in accord with the operative statute, and supported by substantial evidence on the record.
- Yangzhou Bestpak explicitly affirms the Department's preliminary separate rate calculation methodology, stating that "§1673d(c)(5)(B) and the SAA explicitly allow Commerce to factor both de minimis and AFA rates into the calculation methodology. Although again questionable in terms of economic reality, this court detects no legal error in Commerce's use of a simple average rather than a weighted average. The statute also specifically allows for an averaging or any other reasonable method. Because the agency employed a methodology similarly derived from the relevant statutory language, this court affords the appropriate deference due to Commerce."[54]
- Although in Yangzhou Bestpak the Court determined that the Department's methodology, applied to the specific circumstances of the investigation that gave rise to that litigation, was unreasonable, the specific circumstances here are significantly different than those present in the Yangzhou Bestpak scenario.

("Georgetown Applicability Memorandum") available online at http://ia.ita.doc.gov/download/prc-cfsp/CFS%20China.Georgetown%20applicability.pdf.

[53] See Diamond Sawblades and Parts Thereof From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 42930 (July 18, 2013) ("Diamond Sawblades").

[54] See Yangzhou Bestpak, 716 F.3d at 1378.

- The AFA rate in Yangzhou Bestpak was based on the underlying petition, whereas in this case, the AFA rate is based on an actual commercial transaction.
- The methodology employed by the Department for assigning a separate rate applicant ("SRA") rate was quintessentially reasonable: it accounts for the two de minimis recipients, while also accounting for the fact that there is a much larger pool of companies that are presumed to have engaged in dumping.
- It is an illogical leap to assume that the transactions by the SRA companies are akin to Mandatory Respondents, without any characteristic of the AFA companies.

Department's Position: As described above in the "Separate Rate Companies" section of this notice, the Department has calculated positive dumping margins for both mandatory respondents for this final determination. Therefore, in accordance with Department practice, we have assigned a weighted-average margin using the publicly ranged values submitted by Mandatory Respondents to the separate rate companies for this final determination.[55] Therefore, we find parties' arguments with regard to the inclusion of a rate based on total AFA in the calculation of the separate rate to be moot, as we are no longer using this methodology to determine the separate rate. Neither the statute nor the Department's regulations address the establishment of a rate to be applied to respondents not selected for individual examination. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents.[56] Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, de minimis or based entirely on AFA. Thus, although the rate calculated for separate rate companies includes a rate that is partially based on AFA for one of the mandatory respondents,[57] the inclusion of a partial AFA rate is permissible under the guidance provided by the statute, which only prohibits the calculation of a separate rate using rates based entirely on AFA.[58] Additionally, we disagree with parties' arguments that we should retroactively "correct" the preliminary suspension of liquidation instructions. As an initial matter, the Department disagrees that it erred in calculating the separate rate of 22.14 percent for the Preliminary Determination. Methodological arguments aside, we note that no parties alleged that the Department made any ministerial errors in its preliminary calculation of the separate rate. Further, our regulations are clear with regard to the collection of duties during the period covered by "provisional measures." Specifically, 19 CFR 351.212(d) explains the provisional measures deposit cap. It states:

> This paragraph applies to subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of an affirmative final injury determination or, in a countervailing duty proceeding that involves merchandise from a country that is not entitled to an injury test, the date of the Secretary's notice of an affirmative final countervailing duty determination. If the amount of duties that would be assessed by applying the rates included in the Secretary's

[55] See, e.g., Preliminary Decision Memo; see also, e.g., Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part, 75 FR 53661, 53662 (September 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

[56] See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791, 63794 (Oct. 17, 2012).

[57] See Comment 12, below.

[58] See section 735(c)(5)(A) of the Act.

> affirmative preliminary or affirmative final antidumping or countervailing duty determination ("provisional duties") is different from the amount of duties that would be assessed by applying the assessment rate under paragraphs (b)(1) and (b)(2) of this section ("final duties"), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties.[59]

Therefore, our regulations anticipate that there may be changes in the calculated dumping margins between the preliminary and final determinations of an investigation, and clearly instruct how to account for those changes. However, neither the statute nor the regulations allow for us to retroactively adjust dumping margins at the final determination, particularly not on the basis of arguments or allegations from interested parties that the preliminary determination methodology was flawed. Instead, the regulations allow for duties to be assessed at the lower of the preliminary calculated margin or the final calculated margin. Accordingly, if we determine we should recalculate the separate rate such that it is lower for the final determination, the regulations instruct us to collect the lower of the two calculated duty amounts. Additionally, as explained above, we have calculated a higher separate rate for the final determination of this investigation, so in accordance with 19 CFR 351.212(d) "the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties."

Dehua TB et al. argues that the Department's practice with regard to the PRC-wide entity as well as its separate rate practice are contrary to the findings it uses to justify CVD cases. First, we find that Dehua TB et al. has conflated the concepts of the "NME-wide entity" for antidumping duty assessment purposes with the "single economic entity" that characterized those economies in Georgetown Steel.[60] The Department's analysis in the Georgetown Applicability Memorandum focused only on the latter concept. The CAFC and the Department characterized those economies:

> as economies with a marked absence of market forces, in which: (p)rices are set by central planners. "Losses" suffered by production and foreign trade enterprises are routinely covered by government transfers. Investment decisions are controlled by the state. Money and credit are allocated by the central planners. The wage bill is set by the government. Access to foreign currency is restricted. Private ownership is limited to consumer goods.[61]

In other words, the government is the entire economy for all intents and purposes. Given the reforms discussed in the Georgetown Applicability Memo, the Department found that the PRC's economy is no longer comprised of a single central authority and that the policy that gave rise to the Georgetown Steel litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a Chinese producer.

In proceedings involving NME countries such as the PRC, the Department has a rebuttable

[59] See 19 CFR 351.212(d)
[60] See Georgetown Steel Corp. v. United States, 801 F.2d 1308, 1310 (Fed. Cir. 1986) ("Georgetown Steel").
[61] See Georgetown Applicability Memo at 4, citing Georgetown Steel quoting Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 FR 19375, 19376 (May 7, 1984).

presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government (e.g., a firm is nothing more than a government work unit), but rather from the NME government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy. As such—and contrary to Dehua TB et al.'s assertions—this presumption is patently different from a presumption that all firms are one-and-the-same as the government, such that they comprise a monolithic economic entity. Moreover, the presumption underlying the separate rates test was upheld in Sigma Corp,[62] where the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources. The CAFC also stated that it was within the Department's authority to employ a presumption of state control for exporters in an NME country and to place the burden on the exporters to demonstrate an absence of central government control.[63]

Firms that do not rebut the presumption are assessed a single AD rate, i.e., the NME-Entity rate.[64] However, in recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department developed the separate rates test. In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control. Rather, the PRC's economy today is neither command-and-control nor market-based; government control and/or influence is omnipresent (which gives rise to the presumption) but not omnipotent (and hence, the presumption is rebuttable).[65]

Dehua TB et al.'s reliance on a partial quote from the Georgetown Applicability Memo regarding prices in the PRC is misplaced. The quote in full states that "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in PRC."[66] This quote is a reference to deregulation of prices, i.e., phasing out of the direct, administrative price-setting common in command-and-control economies. It is not a reference, for example, to an absence of direct government control over resource allocations or government control or influence over economic actors that can fundamentally distort the price formation process. Therefore, the reference is not relevant to our requirements that NME companies seeking a separate rate demonstrate the absence of de jure or de facto control.[67]

Additionally, the Department disagrees that it must calculate individual dumping margins for Zhejiang Dehua TB Import and Export Co., Ltd. and Shanghai Senda Fancywood Inc. as a result of the calculation of a separate rate that is above de minimis because it has the required information on the record in the form of voluntary questionnaire responses. As discussed in further detail below, the Department determined that the selection of a voluntary respondent in this investigation would pose an undue burden that would inhibit the timely completion of this

[62] Sigma Corp v. United States, 117 F.3d 1401, 1405-07 (Fed. Cir. 1997).
[63] See id.
[64] See 19 CFR 351.107(d), which provides that "in an antidumping proceeding involving imports from a non-market economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."
[65] See Georgetown Applicability Memo at 9.
[66] See Georgetown Applicability Memo at 5, citing The Economist Intelligence Unit, Country Commerce: China, 2006 at 73.
[67] See e.g., Diamond Sawblades and accompanying Issues and Decision Memorandum at Comment 2.

investigation, in accordance with section 782(a) of the Act.[68] The Department continues to find that it should not have selected the aforementioned companies as voluntary respondents in this investigation, notwithstanding parties' arguments with regard to the calculation of a positive margin for the separate rate companies for the final determination.

Comment 2: Respondent Selection

A. Limiting the Number of Respondents

Dehua TB et al., Lianyungang Yuantai, Shelter Forest, and Senda Fancywood et al.'s Case Briefs:

- The Department improperly limited the number of respondents to two companies because it relied on factors other than a "large number of exporters" in limiting that number.
- Even if the Department properly limited the number of respondents, two is not a "reasonable number."
- The Department should reopen the record and select at least one more respondent in order to comply with the statute.
- The recent CAFC decision in Bestpak does not support the selection of only two mandatories.

Department's Position: Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act provides an exception when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine individually all companies.[69] In the Respondent Selection Memo, we stated that we considered the number of exporters/producers identified in the Petition (481 companies) and the complexities expected to arise in this investigation in deciding to limit our examination.[70] Contrary to parties' arguments, whether we explicitly stated that 481 companies constituted a large number or not is immaterial to the position put forth that indicated the Department found 481 companies to be a large number of potential exporters such that limiting its examination was appropriate. We further noted that no interested parties argued that 481 is not a large number, nor do any parties make that argument in their case briefs.[71] In addition to considering the large number of companies under review, the Department also considered its resources in selecting respondents for this investigation, including its current and anticipated workload and deadlines in other administrative proceedings coinciding with this investigation.[72] With respect to our reference to limited resources in our analysis of whether we should limit the number of respondents, we note that the CAFC has recognized that the Department is afforded broad discretion in allocating its investigative and enforcement resources.[73] Thus, the Department did not merely rely on factors other than the large number of potential respondents in making the determination to

[68] See Comment 2 below, "Respondent Selection."
[69] See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9, "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Respondent Selection" (November 29, 2012) ("Respondent Selection Memo") at 2, incorporated herein by reference.
[70] See id. at 3.
[71] See id. at 5.
[72] See Respondent Selection Memo at 3.
[73] See Torrington v. United States, 68 F.3d 1347, 1351 (1995) (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)).

limit its examination. Section 777A(c)(2)(B) of the Act permits the Department to limit its examination to those respondents accounting for the largest volume of merchandise under consideration that can reasonably be examined, which in this case we determined to be two.[74] While the CAFC in Bestpak noted comments from the CIT regarding the Department's selection of only two mandatory respondents, the issue in that case involved a different set of circumstances where the Department did not act to select any additional respondents when it found that one of the two mandatory companies was not participating in the proceeding.[75] Unlike the facts in Bestpak, here both companies have participated in the investigation. Therefore, in consideration of the large numbers of exporters identified in the Petition and, based upon its resources, the number of respondents that the Department was able to reasonably examine, the Department properly limited the number of respondents selected as mandatory respondents in this investigation and therefore will not reopen the record at this late stage to examine additional mandatory respondents.

B. Collapsing for Purposes of Respondent Selection

Shelter Forest's Case Brief:

- The Department should have accepted Shelter Forest's request to be collapsed for purposes of respondent selection, which would have made Shelter Forest among the largest PRC exporters.

We disagree that we should have collapsed Shelter Forest with its PRC suppliers for purposes of respondent selection, in accordance with our practice. We clearly stated in the cover letter to the Q&V questionnaire that determinations concerning whether particular companies should be collapsed require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis.[76] Therefore, we would not consider collapsing requests at the respondent selection phase of this investigation. In the Respondent Selection Memo, we explained that we disagreed with Shelter Forest's contention that the record contained all necessary information to make a collapsing decision such that we would not need to request additional information in the form of supplemental questionnaires, or dedicate significant time and resources to a detailed analysis of the information provided by Shelter Forest.[77] We further noted that two interested parties filed comments opposing Shelter Forest's request.[78] Accordingly, we appropriately followed our practice in denying Shelter Forest's request for the Department to make a collapsing determination at the initial stage of the investigation for purposes of respondent selection.

C. Voluntary Respondents

Dehua TB et al.'s Case Brief:

- The CIT decision in Grobest does not support the decision to decline to review cooperating voluntary respondents because the Court stated that the statute sets a higher standard for the Department to meet when denying individual review of a

[74] See Respondent Selection Memo at 6.
[75] See Yangzhou Bestpak, 716 F.3d 1370, 1379 (Fed. Cir. 2013).
[76] See Letter from Catherine Bertrand, Program Manager, Office 9 to Interested Parties regarding quantity and value questionnaire (October 18, 2012) cover letter at 2.
[77] See Respondent Selection Memo at 5-6.
[78] See id. at 6.

voluntary respondent and only when reviewing a voluntary respondent would be unduly burdensome.

- The Department should calculate individual margins for both Dehua TB and Senda.

We disagree that we should have selected Dehua TB and Senda as voluntary respondents in this investigation. We stated in the Respondent Selection Memo, which was issued near the beginning of the investigation, that we would evaluate the feasibility of examining additional respondents if we received voluntary responses in accordance with the Act and the regulations.[79] We note that the reasons provided for not selecting a voluntary respondent are not the same reasons provided for limiting the number of mandatory respondents. In the Respondent Selection Memorandum, the Department noted that it was limiting the number of mandatory respondents examined based on its current case load and the constraints on its administrative resources.[80] When evaluating the requests for voluntary treatment in the Voluntary Respondent Memorandum, the Department analyzed the request later in the investigation and explained that the unique aspects of this investigation demonstrated why examining a voluntary respondent would have been an undue burden and would have inhibited the timely completion of this investigation.[81]

This analysis was in accordance with the CIT's decision in Grobest, where the Court directed the Department to make a case-specific determination of whether examination of a voluntary respondent in that review would be unduly burdensome and inhibit the timely completion of the review.[82] However, in our Voluntary Respondent Selection Memo, we noted that Grobest involved a review, and stated that this investigation poses a number of additional complications that would make examination of a voluntary respondent unduly burdensome.[83] Specifically, we stated:

> {I}nvestigations typically involve products and industries which have not previously been analyzed by the Department and are therefore matters of first impression and therefore require significant additional research and analysis. Additionally, investigations usually involve companies which have never been subject to the Department's examination. This typically requires additional effort from the Department in the form of multiple extensive supplemental questionnaires in order to obtain data and information from respondent companies in a form that is useful for the purpose of calculating dumping margins. Further, investigations require any company seeking a separate rate to file a full separate rate application, rather than the more abbreviated certifications which are filed in administrative reviews by companies that have already undergone successfully a separate rate analysis. Separate rate applications present an additional challenge because they also require examination of company information for which the Department usually has no familiarity. Specifically, the Department requires

[79] See id. at 6-7.
[80] See id. at 3.
[81] See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9, "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Selection of Voluntary Respondent" (March 15, 2013) ("Voluntary Respondent Selection Memo") at 3-5, incorporated herein by reference.
[82] See Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States, 815 F. Supp. 2d 1342, 1363-64 (CIT 2012) ("Grobest").
[83] See Voluntary Respondent Selection Memo at 4.

> significant supporting documentation from each separate rate respondent regarding sales of the merchandise under consideration, as well as ownership, affiliation, price negotiation, profit dispensation, and management selection. All of the submitted documentation must be analyzed in its entirety, and often requires the Department to issue deficiency questionnaires before a separate rate is assigned, which requires a significant output of resources.[84]

We went on to describe the particular difficulties posed by this investigation such that selecting a voluntary respondent for individual examination would be unduly burdensome and inhibit the timely completion of this investigation.[85] Notwithstanding the difficulties posed in an investigation versus a review, we expressly identified those factors that had already created an additional burden on the Department's already-strained resources, noting the complexities of the mandatory respondents based on an initial review of questionnaire responses and supplemental questionnaire responses, the 107 separate rate applications received that each required thorough examination, and the complicated and contentious nature of the scope of this investigation, which underwent several revisions prior to the Preliminary Determination,[86] as well as for this final determination.[87] Thus, this case is distinguished from Grobest in that the Department adequately explained that given its existing resources and the complexity of the investigation, the selection of a voluntary respondent in this investigation would pose an undue burden that would inhibit the timely completion of this investigation, in accordance with section 782(a) of the Act.

Comment 3: Selection of the PRC-Wide Margin

Anhui Tiansen et al., and Liberty Woods et al.'s Case and Rebuttal Briefs:

- The Department properly found the Petition rates to be uncorroborated and did not use them in determining the PRC-wide margin in the Preliminary Determination.
- The margin selected by the Department as the PRC-wide margin was based on a transaction-specific margin calculated for the Jiangyang Group which was aberrational, unusual and unreasonable.
- The sale underlying the highest transaction-specific margin was for an unusual product, and specific transactions are generally uninformative and do not provide substantial evidence to support an AFA rate.[88]
- The rate selected as the PRC-wide rate in the Preliminary Determination is also unreasonable compared to the preliminarily assigned rates and other transaction-specific margins on the record. A PRC-wide rate that is five times greater than the highest assigned rate in a proceeding is "punitive, aberrational, or uncorroborated, and excessive" and "far beyond" an amount sufficient to deter future non-compliance.[89]
- The amount to which the selected margin exceeds other transaction-specific margins on the record confirms the rate is not a reasonable estimate of the PRC-wide entity's actual rate.

[84] See Voluntary Respondent Selection Memo at 4.
[85] See id.
[86] See Voluntary Respondent Selection Memo at 4-5.
[87] See Scope of this Investigation section, above.
[88] Citing Lifestyle Ents., Inc. v. United States, 844 F. Supp. 2d 1283, 1290 n.9 (CIT 2012).
[89] Citing Gallant Ocean (Thai.) Co. v. United States, 602 F.3d 1319, 1323 (Fed. Cir. 2010) at 1324 (quoting F. lli De Cecco, 216 F.3d at 1032 (internal quotations omitted)); The Watanabe Group v. United States, 2010 Ct. Int'l Trade LEXIS at *15 n.9 ("{T}he underlying principle of Gallant applies insofar as it requires the AFA rate to be a reasonably accurate estimate of the PRC-wide entity's actual rate.").

- The Department should revise the PRC-wide rate in the final determination to be in accordance with the statute, court precedent and the Department's past practice. The Department should select a margin that falls within a range of transactions that are not aberrational nor unusual in terms of transaction quantities or products and does not reach far beyond what is necessary to induce compliance in future reviews.
- In order for the PRC Entity rate to be "representative," as is required, the Department at a minimum should have looked to sales of standard sized plywood with Birch face, by far the most prevalent face for the plywood subject to this investigation.
- Having determined that the most reasonable approach to most accurately assign the adverse inference rate to the PRC Entity was to examine the sales of Mandatory Respondents, the Department was required to examine weighted average margins rather than individual transactions.
- Petitioners do not challenge the Department's rejection of the highest rate calculated in the petition to serve as the PRC-wide rate in this investigation.

Petitioners' Case and Rebuttal Briefs:

- The Department's Preliminary Determination to apply AFA to the PRC-wide rate was correct, and based upon substantial evidence on the record. The methodology employed for determining the AFA rate should remain unchanged for the final determination.
- The Department determined that the transaction underlying the PRC-wide rate was "neither unusual in terms of transaction quantities nor otherwise aberrational."
- The SRA respondents have provided no real rationale as to why the sale which served as the basis for the AFA rate in the Preliminary Determination was aberrational, or how the alleged aberrational nature of this sale impacted the calculated dumping margin.
- In a recent remand determination, the Department stated that just because a margin is transaction-specific or the highest, even by a wide margin, it is not automatically rendered aberrational.[90]

Department's Position: As described above in the section titled "Selection of the Adverse Facts Available Rate for the PRC-Wide Entity," we selected the highest CONNUM-specific margin calculated for either respondent, in accordance with the statute, court precedent and the Department's past practice. Additionally, as explained above, this margin is not aberrational or unusual, in terms of quantities or product.[91] Therefore, as the margin we are selecting for this final determination is unrelated to the transaction-specific margin that was selected as the AFA-rate in the Preliminary Determination, we are not addressing these arguments further.

Comment 4: Initiation of the Investigation was Unlawful

Liberty Woods et al.'s Case Brief:

- Petitioners included softwood products within the scope of the investigations, but did not include the domestic softwood plywood industry in the denominator of the industry support calculation in the petition. This was based on an unsubstantiated and

[90] Citing Results of Redetermination Pursuant to Court Remand (July 1, 2011), PSC VSMPO - AVISMA Corp. v. United States, Consol. Court No. 09-00349 (CIT March 7, 2011) at 16.

[91] We note that this rate has changed since the Preliminary Determination as a result of changes to the surrogate country selected for this final determination and the consequent changes to surrogate values. See Preliminary Determination, 77 FR at 25952; see also below at Comments 7-11.

speculative assumption that the entire softwood plywood industry makes only structural plywood.

- The Department declined to poll the domestic industry as requested and instead made conclusions based on speculation.
- The Department's initiation standard is overly lenient and allows antidumping investigations to proceed which are based on unsubstantiated allegations.
- Liberty Woods et al. raised concerns related to Petitioners' standing claims, but were shut out of the process by the Department's acceptance of and reliance on comments which were filed late on the final day of the 20-day initiation period.
- Because the Department's standing conclusion is evaluated based on the facts and conclusions as of the time of initiation, it would be unlawful for the Department to engage in backfilling the record with "the equivalent of post hoc rationalizations." This case is irreparably flawed.
- Petitioners' attempt to draw a line between hardwood and softwood products using U.S. Products Standard ("P.S.") 1-09 for structural plywood is arbitrary and based on an assumption that all softwood plywood is structural. However, all softwood plywood is not structural.
- Petitioners and the Department failed to fully address the issues raised with regard to industry standing in a timely manner, or to allow sufficient time for parties to comment on Petitioners' submissions. The Department stated that "{w}e conducted a search of the Internet and have been unable to locate information that contradicts Petitioners' assertions," yet the Department did not memorialize this internet search in any way.
- The Statute requires the Department to determine whether there is industry support for the Petition within 20 days.[92] Both the law and the courts are clear that the Department's pre-initiation phase determination on industry support is final and cannot later be revisited or revised, absent a court order. The Department, therefore, cannot use the final determination in this proceeding to further justify its pre-initiation phase findings regarding industry support.
- The Department cannot supplement its reasoning from the pre-initiation phase at this point in the proceeding, however, that does not limit the court's power to review the industry support determination.[93]

Petitioners' Rebuttal Case Brief:

- Petitioners made direct and documented responses to each and every assertion presented by Liberty Woods et al. during the pre-initiation phase and the Department's initiation memorandum cogently and comprehensively addressed every assertion – no matter how suspect or misleading– presented by Liberty Woods et al. at that time.
- The Department's decision to initiate this investigation based, in part, on its finding of sufficient domestic industry support was supported by substantial evidence on the record and otherwise in accordance with law.

Department's Position: We disagree with Liberty Woods et al. that the initiation of this proceeding was unlawful. Pursuant to section 732(c)(4)(E) of the Act, interested parties may submit comments regarding industry support before initiation, and a determination regarding

[92] Citing 19 U.S.C. §§ 1671a(c)(I)(A), (B), 1673a(c)(I)(A), (B).

[93] See Downhole Pipe & Equip. LP v. United States, 887 F. Supp. 2d 1311, 1319 (Ct. Int'l Trade 2012) (citing PT Pindo Deli Pulp & Paper Mills, 825 F. Supp. 2d at 1323).

industry support shall not be reconsidered after the Department's initiation of an investigation. Thus, by law, policy, and practice the Department does not revisit the issue of industry support during an investigation.[94] As we are statutorily prohibited from revisiting the issue of industry support here, we incorporate our analysis and decision from the Initiation here in this final determination.[95] Additionally, we note that Liberty Woods et al. does not argue that the Department can or should address the issue of industry support within the context of the final determination. Nevertheless, there are a few arguments that need to be addressed for clarification of the record.

At the time of initiation, the Department found that the margins and industry support established by the petitions were adequate for the products which are covered by the scope of these investigations.[96] Although Liberty Woods et al. provided selective information from certain companies' websites, it failed to provide any compelling evidence that had more probative value than a website, such as an affidavit from any of the companies that they were producers of softwood plywood which is not structural plywood that is included within the scope definition.[97] While Petitioners provided evidence to rebut/contradict the claims of Liberty Woods et al., and although this occurred on day 20, they merely placed on the record additional webpages to rebut the arguments of Liberty Woods et al. (i.e., to provide the Department with a complete picture of the website information placed on the record by Liberty Woods et al.). Additionally, Petitioners provided affidavits to contradict what Liberty Woods et al. had submitted, which we found to have more probative value than the website information submitted by Liberty Woods et al. Although Liberty Woods et al. now claims that it was at a disadvantage because these affidavits were placed on the record on day 20, we note that Petitioners did not present any new facts/arguments—what they provided was tailored to rebutting Liberty Woods et al.'s arguments. Further, although we did not memorialize the internet searches we referenced in the Initiation on the record of this proceeding, Liberty Wood et al.'s only argument is that they did not have an opportunity to comment on the search. However, they are not arguing that there is other information on the internet that we ignored or failed to consider that would support their position.

Liberty Woods et al. claims that it was shut out of the process and not given the opportunity to address Petitioners' submissions with regard to industry standing. We disagree. Liberty Woods et al. submitted multiple rounds of comments, and met with Department officials. That Liberty Woods et al. failed to provide enough probative evidence to overcome information submitted by Petitioners that was reasonably available to them is not reason to find that they were effectively excluded from meaningful participation. Further, the information submitted by Petitioners on day 20 merely supported their consistent position that there are two distinct plywood industries in rebuttal to information submitted by Liberty Woods et al., not brand new information. As our final clarification on this issue, we note that Petitioners were clear throughout the initiation process that there are two distinct plywood industries (i.e., hardwood/decorative and

[94] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000) and accompanying Issues and Decision Memorandum at Comment 9.
[95] See Antidumping Duty Investigation Initiation Checklist: Hardwood and Decorative Plywood from the People's Republic of China (October 17, 2012) ("AD Initiation Checklist"), at Attachment II, Analysis of Industry Support for the Petitions Covering Hardwood and Decorative Plywood from the People's Republic of China.
[96] See id.
[97] See id.

softwood/structural), and we addressed those industries in the Initiation.[98] Additionally, although Petitioners did not make a formal exclusion for structural plywood until Day 18, the original Petition was clear that structural plywood was distinct from the products which are covered by the scope.[99] Although the Department is not revisiting its industry support determination here, these clarification points are appropriate and we believe relevant for parties to understand the facts and context of the industry support determination made for purposes of initiation of the AD and CVD investigations on hardwood and decorative plywood.[100]

Comment 5: Comparison Methodology- Differential Pricing v. Targeted Dumping

Mandatory Respondent's Case Brief:

- The Department unlawfully withdrew its targeted dumping methodology without demonstrating that there was good cause, and without providing the required notice and comment.
- The CIT recently affirmed that the withdrawal was unlawful in Gold East Paper, finding that the Department failed to provide notice and comment.[101]
- The Department must follow its targeted dumping regulation in the final determination by applying standard statistical techniques and by only applying the A-T comparison method to the targeted and dumped sales or, alternatively, find that there is no basis for a determination of targeted dumping.
- The Department violated the Administrative Procedures Act ("APA") requirement of notice and comment by adopting a brand new complex targeted dumping methodology, providing only a very basic explanation of the new test in the Preliminary Determination and not disclosing the source materials for the basis of the statistical analysis.[102]
- The Cohen's *d* test is unreasonable because it uses simple averages of CONNUM-specific U.S. prices to determine the mean, which gives undue weight to aberrant, but small, sales. Additionally, this method counts prices above the mean (i.e., non-targeted sales) in determining whether there is a significant pattern within the meaning of 19 U.S.C. § 1677f-l(d)(l)(B)(i).
- Regardless of the specific method by which the Department determines what sales are targeted in the final determination, it is both unlawful and unreasonable to apply the alternative methodology to non-targeted and targeted non-dumped sales.
- The targeted dumping statute does not grant the Department authority to zero negative margins in instances where targeted dumping is found and the Department's interpretation is unreasonable and contrary to its stated position that section 1677(35)(A) does not give it authority to zero in investigations.

[98] See id.
[99] See e.g., PRC Plywood Petition at 6.
[100] See e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 75 FR 22372 (April 28, 2010).
[101] Citing Gold East Paper Jiangsu Co. v. United States, 918 F. Supp. 2d 1317 (CIT 2013) ("Gold East Paper")
[102] Citing 5 U.S.C. § 553(b)(3) and (c).

Petitioners' Rebuttal Case Brief:

- Respondents' citation to a recent CIT Slip Op. where the CIT ruled the Department's actions to be inconsistent with the APA is irrelevant as that case is still being litigated and no final decision has been made.
- Respondents provide no basis for their claim that "{t}his new test is so complex and far reaching that it amounts to a new rule and the Department should have put the full background materials out for notice and comment, which it did not do." Respondents likewise provide no argument as to how the new test, or the use of a new test, violates any statutory language.
- Respondents' arguments regarding the Cohen's *d* test are misplaced. Weighted averages, not simple averages, are used to determine the mean. Further, it is reasonable for the Department to consider both lower priced and higher priced sales in the Cohen's *d* analysis because higher priced sales are equally capable as lower priced sales to create a pattern of prices that differ significantly.
- The Department has addressed whether or not the pattern of differences could be taken into account by using the average-to-average methodology in the Preliminary Determination and in Xanthan Gum.[103]
- In addition, the Department's use of zeroing has been upheld by the courts as explained in the I&D Memo for Xanthan Gum.

Department's Position: In the Preliminary Determination, we applied the differential pricing analysis and determined to use the mixed alternative method in making comparisons of export price ("EP") or constructed export price ("CEP") and NV for Sanfortune and the Jiangyang Group.[104] For the final determination, we continue to apply the differential pricing analysis. For the Jiangyang Group, based on the results of the differential pricing analysis, we find that 68.6 percent of Jiangyang's export sales confirm the existence of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. However, we determine that the average-to-average method can appropriately account for such differences because there was not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the mixed alternative method. For Sanfortune, based on the results of the differential pricing analysis, we find that only 20 percent of Sanfortune's export sales confirm the existence of a pattern of EPs for comparable merchandise that differed significantly among purchasers, regions, or time periods, which is less than the 33 percent threshold established by the Cohen's *d* test. Therefore, for the final determination, we determined to use the standard method in making comparisons of EP (or CEP) and normal value for both the Jiangyang Group and Sanfortune, as we find that the average-to-

[103] Citing Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) ("Xanthan Gum").

[104] See Preliminary Decision Memo at 28-31. For the Jiangyang Group, based on the results of the differential pricing analysis, the Department found that 64.4 percent of Jiangyang's export sales confirmed the existence of a pattern of EPs (or CEPs) for comparable merchandise that differed significantly among purchasers, regions, or time periods. Further, the Department determined that the average-to-average method could not appropriately account for such differences because there was a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the mixed alternative method. For Sanfortune, based on the results of the differential pricing analysis, the Department found that 36.6 percent of Sanfortune's export sales confirmed the existence of a pattern of EPs for comparable merchandise that differed significantly among purchasers, regions, or time periods. Further, the Department determined that the average-to-average method could not appropriately account for such differences because there was a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the mixed alternative method.

average method can appropriately account for differences among purchasers, regions, or time periods for both respondents. For additional explanation, see Sanfortune Final Analysis Memorandum and Jiangyang Final Analysis Memorandum.

The Department's Withdrawal of the Targeted Dumping Regulation

The Department disagrees with Mandatory Respondents that the withdrawal of the targeted dumping regulation violated the APA such that Mandatory Respondents are entitled to its application. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulation in December 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis. The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation by posting a notice in the Federal Register seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under 19 USC 1677f-1(d)(1)(B).[105] As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments.[106] Various parties submitted comments in response to the Department's request.[107]

After considering those comments, the Department published a proposed new methodology in May of 2008 and again requested public comment.[108] Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."[109] Numerous parties submitted comments.[110] On December 10, 2008, the Department issued its interim final rule withdrawing the targeted dumping regulation. [111] Although this withdrawal was effective immediately, the Department invited parties to submit comments, and gave them a full 30 days to do so.[112] The comment period ended on January 9, 2009, with several parties submitting comments.[113]

[105] See Targeted Dumping in Antidumping Investigations; Request for Comment, 72 FR 60651 (October 25, 2007).
[106] See id.
[107] See Public Comments Received December 10, 2007, available at http://ia.ita.doc.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html (Dec. 10, 2007) (listing the entities that commented).
[108] See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations, 73 FR 26371, 26372 (May 9, 2008) ("Proposed Methodology"). On June 9, 2008, the Department extended the original June 9, 2008 due date for comments by ten business days to give more parties an opportunity to make submissions. See Request for Comment and Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations, 73 FR 32557 (June 9, 2008).
[109] Proposed Methodology, 73 FR at 26372.
[110] See Public Comments received June 23, 2008, available at http://ia.ita.doc.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html (June 23, 2008) (listing the entities that commented).
[111] See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930, 74931 (Dec. 10, 2008) ("Withdrawal Notice").
[112] See id.
[113] See Public Comments Received January 23, 2009, available at http://ia.ita.doc.gov/download/ targeted-dumping/comments-20090123/td-cmt-20090123-index.html (Jan. 23, 2009) (listing the entities that commented).

The CIT recently held that the issuance of the Department's interim final rule withdrawing the targeted dumping regulation was defective.[114] The Court's ruling, however, is not final and conclusive as this matter is currently pending litigation.

The Department's Differential Pricing Analysis

As an initial matter, we note that the Department did not violate the APA in not providing parties with adequate notice and comment before adopting the differential pricing analysis. Mandatory Respondents have argued that the Department's differential pricing methodology is so "complex and far reaching that it amounts to a new rule" and thus requires the Department to pursue formal notice-and-comment rulemaking. However, we disagree with Mandatory Respondents' assessment of our obligations with respect to changes in our practice. We note that where neither the law nor our regulations require a particular analysis, it is permissible for us to make changes to our practice or policy on a case-by-case basis.[115] The notice-and-comment requirements of the APA do not apply to such instances where the Department makes changes to its interpretive rules, general statements of policy or procedure, or practice.[116] For instance, our determination to implement the Nails Test methodology in a single case, while public comments were pending, was upheld by the CIT.[117] Furthermore, it is important for us to gain practical experience with this new analytical approach, on a case-by-case basis before turning this methodology into a hard and fast rule to be applied broadly in all antidumping proceedings.[118] In any event, as described above, we appropriately gave notice and requested comment on its consideration of changes to our methodology. Additionally, the specific methodologies we used were first applied in the Xanthan Gum post-preliminary determination, which was published on March 4, 2013,[119] and had also been applied in a number of preliminary determinations prior to the Preliminary Determination in this investigation on May 3, 2013.[120] Further, we disagree with Mandatory Respondents' arguments that we failed to disclose all background materials for its new test. The methodologies and calculations we used in the Preliminary Determination were released to interested parties in full,[121] and we sought further comment within the context of this

[114] See Gold East Paper, 918 F. Supp. 2d at 1327-28.
[115] See, e.g., Saha Thai Steel Pipe Company v. United States, 635 F.3d 1335, 1341 (Fed. Cir. 2011) ("{W}e find that Commerce reasonably interpreted {the statute}. The fact that Commerce changed its policy is irrelevant, as Commerce is entitled to change its views, and a new administrative policy based on a reasonable statutory interpretation is nonetheless entitled to Chevron deference.) (citing Rust v. Sullivan, 500 U.S. 173, 186-87, (1991); Nakornthai Strip Mill Pub. Co. v. United States, 587 F. Supp. 2d 1303, 1307-08 (CIT 2008) ("Commerce has 'discretion to change its policies and practices as long as they are reasonable and consistent with their statutory mandate {and} may adapt its views and practices to the particular circumstances of the case at hand, so long as the agency's decisions are explained and supported by substantial evidence on the record.'") (quoting Trs. in Bankruptcy of N. Am. Rubber Thread Co. v. United States, 533 F. Supp. 2d 1290, 1297 (2007)); United States Magnesium LLC v. United States, 31 C.I.T. 988, 990-992 (2007) (upholding Commerce's discretion, to apply combination rates automatically in nonmarket economy antidumping investigations, but to proceed on a case-by-case basis in deciding whether to implement the policy in administrative reviews, where neither the statute nor the regulations required a particular practice).
[116] 5 U.S.C. § 553(b)(3)(A).
[117] See Mid Continental Nail Corp. v. United States, 712 F. Supp. 2d 1370, 1374-76 (CIT 2010).
[118] See SEC v. Chenery Corp., 332 U.S. 194, 202-203 (1947).
[119] See Xanthan Gum, 78 FR at 33352 (stating that the Department released its post-preliminary differential pricing analysis on March 4, 2013).
[120] See, e.g., Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 17637 (March 22, 2013).
[121] See Preliminary Decision Memo at 27-31; see also Jiangyang Final Analysis Memo; see also Sanfortune Final Analysis Memo.

proceeding in the form of case and rebuttal briefs to be considered for this final determination. Mandatory Respondents took full advantage of this opportunity and submitted multiple arguments on the differential pricing analysis in its case brief. Therefore, we disagree with Mandatory Respondents that we did not provide adequate notice or opportunity to comment on its changing methodology, both prior to and within the context of this proceeding.

We disagree with Mandatory Respondents that the Cohen's *d* test is unreasonable. To the contrary, and as explained in the Preliminary Determination, we continue to develop our approach pursuant to our authority to address potential masked dumping. In carrying out the statutory objective, we determine whether "there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods . . . ."[122] With the statutory language in mind, we relied on the differential pricing analysis to determine whether the criteria are satisfied such that application of the alternative methodology is appropriate.

As an initial matter, we note that Mandatory Respondents' arguments have no grounding in the language of the statute. There is nothing in the statute that mandates how we measure whether there is a pattern of export prices that differs significantly. To the contrary, carrying out the purpose of the statute here is a gap-filling exercise done by the Department. As explained in the Preliminary Determination and below, our differential pricing analysis is reasonable, and the use of Cohen's *d* test as a component in this analysis is in no way contrary to the law.

Contrary to Mandatory Respondents' claim, the statute does not require that we consider only lower priced sales in the differential pricing analysis. We have the discretion to consider sales information on the record in our analysis and to draw reasonable inferences as to what the data show. Contrary to Mandatory Respondents' claim, it is reasonable for us to consider both lower priced and higher priced sales in the Cohen's *d* analysis because higher priced sales are equally capable as lower priced sales to create a pattern of prices that differ significantly. Further, higher priced sales will offset lower priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets, that can mask dumping. The statute states that the Department may apply the average-to-transaction comparison method if "there is a pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time," and the Department "explains why such differences cannot be taken into account" using the average-to-average comparison method.[123] The statute directs the Department to consider whether a pattern of prices differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not provide that the Department considers only higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. The Department has explained that higher priced sales and lower priced sales do not operate independently; all sales are relevant to the analysis. Higher or lower priced sales could be dumped or could be masking other dumped sales—this is immaterial in the Cohen's *d* test and the question of whether there is a pattern of export prices that differ significantly because this analysis includes no comparisons with normal values. By considering all sales, higher priced

[122] See 19 USC 1677f-1(d)(1)(B).
[123] See section 777A(d)(1)(B) of the Act.

sales and lower priced sales, the Department is able to analyze an exporter's pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time, signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in a discriminating pricing behavior, there is cause to continue with the analysis to determine whether masked dumping is occurring. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior.

Mandatory Respondents argue that the Cohen's *d* test is unreasonable because it uses simple averages of CONNUM-specific U.S. prices to determine the mean, which gives undue weight to aberrant, but small, sales. Therefore, Mandatory Respondents argue that the Department should use a weighted average rather than a simple average of the variances for the test and comparison groups when calculating the pooled standard deviation of the Cohen's *d* coefficient. Mandatory Respondents claim that the correct approach is a weighted average, based on the frequency of observations, to adjust for differences in sizes between the test and comparison groups, and that a simple average gives too much weight to the variance from the test groups.[124] As explained above with respect to other issues, there is no statutory directive with respect to how the Department should determine whether a pattern of export prices that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen's *d* coefficient. The Department's intent is to rely on a reasonable approach that affords predictability. Although Petitioners have argued that the Department uses weighted averages in order to determine the mean, we disagree. The Department finds here that the best way to accomplish this goal is to use a simple average (i.e., giving equal weight to the test and comparison groups) when determining the pooled standard deviation. By using a simple average, the respondent's pricing practices to each group will be weighted equally, and the magnitude of the sales to one group does not skew the outcome (although we note that within both the test group and comparison group, we use weight averaging when calculating the variance for each group). We find it reasonable to use a simple average, in which the respondent's pricing practices to each group will be weighted equally, and the magnitude of the sales to one group does not skew the outcome.

In sum, Mandatory Respondents' arguments fall short of demonstrating that the Department's methodology and use of the Cohen's *d* test does not comply with the statute, fails to address the requirements of section 777A(d)(1)(B)(i) of the Act, or is unreasonable.

Application of the Alternative Methodology

Mandatory Respondents claim that the Department has failed to articulate a reasonable explanation as to why it can apply the alternative methodology to all sales. Mandatory Respondents claim that the alternative methodology should be applied only to targeted sales.

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 method to certain transactions. Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average NVs to the EPs (or CEPs) of individual

[124] See id.

transactions. Although 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 the selection of the appropriate comparison method under section 777A(d)(1) of the Act more generally.

In the Preliminary Determination, the Department explained that the differential pricing analysis relied on a tiered approach to applying an alternative methodology. Depending on the percentage of total sales by value that pass the Cohen's *d* test, the Department applied the average-to-transaction method to either all sales, a subset of sales, or no sales:

If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of export prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the identified pattern of export prices that differ significantly support consideration of the application of an average-to-transaction method to those sales identified by the Cohen's *d* test as part of the pattern of significant price differences as an alternative to the average-to-average method. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

The Department finds that this approach is reasonable because whether, as an alternative methodology, the average-to-transaction method is applied to all U.S. sales, a subset of U.S. sales, or no U.S. sales depends on what percentage of U.S. sales pass the Cohen's *d* test. Thus, there is a direct correlation between the U.S. sales that establish a pattern of export prices that differ significantly and to what portion of the U.S. sales the average-to-transaction method is applied.

Mandatory Respondents' argument that the average-to-transaction method should only be applied to the U.S. sales which are found to have passed, even when 66 percent or more of the value of total sales pass the Cohen's *d* test, would undermine the determination that a pattern of significant price differences exists under section 777A(d)(1)(B)(i) of the Act. The Department employs the differential pricing analysis to determine whether a pattern of export prices that differ significantly by purchasers, regions or time periods exists. Then, under section 777A(d)(1)(B)(ii) of the Act, the Department explains whether such price differences can be taken into account by the average-to-average method,[125] and if not, then the Department may apply the average-to-transaction method. When the Department finds that 66 percent or more of the value of the sales pass the Cohen's *d* test, the Department considers that the pattern of prices that differ significantly is so pervasive in the reported prices that application of the average-to-transaction method to all sales is appropriate to address all masked dumping that may result from such differences. The Department finds that the thresholds employed in the Cohen's *d* test are a reasonable way of determining whether and how to apply the average-to-transaction method as an alternative comparison methodology.

[125] Assuming that the rarely-satisfied conditions for application of the transaction-to-transaction method are not satisfied. See 19 CFR 351.414(c).

If Congress had intended for the Department to apply the average-to-transaction method only to a subset of transactions and use a different comparison method for the remaining sales of the same respondent, Congress could have explicitly said so, but it did not. Instead, Congress expressed its intent with the language of section 777A(d)(1)(B), which imposes a general preclusion from using average-to-transaction comparisons and withdraws that preclusion entirely if the two criteria are satisfied. In the absence of such a preclusion, the Department has the discretion to apply the average-to-transaction method to all transactions or to a subset of transactions.[126] The Department may choose any method that is appropriate. The statute does not preclude the Department's application of the average-to-transaction method to either all of the respondent's transactions or to a subset of those transactions, and the Department has explained its reasons for doing so.

To the extent Mandatory Respondents raise claims regarding the Department's use of the transaction-to-transaction methodology, we note that that, pursuant to the regulations, the transaction-to-transaction methodology is used only in limited circumstances. Pursuant to 19 CFR 351.414(c)(1), quoting the SAA at 842, the Department will use the "transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom made." Use of the transaction-to-transaction methodology is only used in unusual circumstances and was not intended to have broad application.[127] Because this case does not present any unusual circumstances that warrant use of the transaction-to-transaction methodology, we decline to apply it here.

Zeroing

Mandatory Respondents raise several claims regarding the Department's use of the zeroing methodology when applying the average-to-transaction methodology. The CAFC's recent decision in Union Steel v. United States, 713 F.3d 1101 (CAFC 2013), resolved the outstanding question of whether the Department's statutory interpretation is reasonable. The CAFC affirmed the Department's explanation that it may interpret the statute to permit zeroing with respect to the average-to-transaction method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the average-to-average method in investigations.[128] Respondents argue that Union Steel does not directly address the legality of the Department's intent to zero when it applies targeted dumping or differential pricing. However, the CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.[129] Indeed, the Court noted that although the Department recently modified its use of zeroing "to allow for offsets when making average-to-average comparisons in administrative reviews . . . {t}his

[126] See SAA, H.R. Doc. No. 103-316 at 843 (placing no limitation on application of the average-to-transaction method once the Department satisfies the statutory criteria).
[127] See Final Determination of Sales at Less than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (Oct. 25, 2007), and accompanying issues and decision memorandum at Comments 5, 6; see also Antidumping Duties; Countervailing Duties, 62 FR 27296, 27374 (May 19, 1997) ("Preamble"); Notice of Determination Under Section 129; Antidumping Measures on Certain Softwood Lumber Products from Canada, 70 FR 22636, 22639 (May 2, 2005) (explaining that use of the transaction-to-transaction methodology is appropriate because, among other things, the prices of subject merchandise was volatile).
[128] Union Steel v. United States, 713 F.3d 1101 (CAFC 2013) ("Union Steel") at *1106.
[129] See id., at *1106.

modification does not foreclose the possibility of using zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."[130]

Likewise, in United States Steel Corp. v. United States, 621 F.3d 1351 (Fed. Cir. 2010), the CAFC sustained the Department's decision to no longer apply zeroing when employing the average-to-average method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances.[131] Specifically, the Court recognized that the Department may use zeroing when applying the average-to-transaction method where patterns of significant price differences are found.[132]

As the Court affirmed, the Department may reasonably interpret section 771(35) of the Act in the context of the average-to-average comparisons to permit negative comparison results to offset or reduce the sum of the positive comparison results when calculating "aggregate dumping margins" within the meaning of section 771(35)(B) of the Act. In contrast, when applying an average-to-transaction method under 777A(d)(1)(B) of the Act, the Department determines dumping on the basis of individual U.S. sales prices. Under the average-to-transaction method, the Department compares the EP or CEP for a particular U.S. transaction with the average NV for the comparable merchandise of the foreign like product. This comparison method yields results specific to each individual export transaction. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise at an EP or CEP less than its NV. The Department then aggregates the results of these comparisons – i.e., the amount of dumping found for each individual U.S. sale – to calculate the weighted-average dumping margin. To the extent the average NV does not exceed the individual EP or CEP of a particular U.S. sale, the Department does not calculate a dumping margin for that sale or include an amount of dumping for that sale in its aggregation of transaction-specific comparison results.[133] Thus, when the Department focuses on transaction-specific comparison results, the Department reasonably interprets the word "exceeds" in section 771(35)(A) of the Act as including only positive comparison results in the aggregate dumping margin. Consequently, when using the average-to-transaction method, the Department reasonably does not permit negative comparison results to offset or reduce the sum of the positive comparison results when determining the aggregate dumping margin within the meaning of section 771(35)(B) of the Act. Additionally, we note that although we applied an alternative methodology to both mandatory respondents in the Preliminary Determination, we have determined to use the standard method in making comparisons of EP (or CEP) and NV for both the Jiangyang Group and Sanfortune in the final determination. Therefore, Mandatory Respondents' arguments with respect to zeroing within the context of an alternative methodology are not relevant to this final determination.

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[130] See id. at *1110 (internal citations omitted).

[131] See United States Steel Corp. v. United States, 621 F.3d at 1355 n.2, 1362-63 (Fed. Cir. 2010).

[132] See id. at 1363 ("{T}he exception contained in 1677f-1(d)(1)(B) indicates that Congress gave {the Department} a tool for combating targeted or masked dumping by allowing {the Department} to compare weighted average normal value to individual transaction values when there is a pattern of prices that differs significantly among purchasers, regions, or periods of time.").

[133] As discussed previously, the Department does account, however, for the sale in its weighted-average dumping margin calculation. The value of all non-dumped sales is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped transactions is included in the numerator. Therefore, all non-dumped transactions result in a lower weighted-average dumping margin.

Comment 6A: Solid Bamboo Products

Teragren LLC and Smith & Fong Company; Cali Bamboo, LLC; and Higuera Hardwoods, LLC's Case Briefs:

- Products that are made from 100 percent bamboo should be excluded because they are not the same products as the products intended to be covered.

Petitioners's Comments:

- Products made entirely from bamboo and adhesives (also known as "solid bamboo") without any hardwood or softwood species should be excluded in the scope language.[134]

Department's Position: Sections 701 and 731 of the Act require the Department to define the scope of merchandise subject to investigation in each AD and CVD investigation. In deciding whether to initiate an investigation and whether an order should be imposed, the statute requires the Department to make determinations with respect to a class or kind of foreign merchandise.[135] If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise described in the petition to determine the scope of the final order.[136] The Department's legal authority to determine the scope of its orders is well-established.[137]

We agree that products that are constructed of 100 percent bamboo and adhesive are not included in the scope of the investigations, as Petitioners indicate this is not a product from which they seek relief. Thus, we are including an additional exclusion as follows: "The scope of these investigations excludes the following items: … (5) products made entirely from bamboo and adhesives (also known as "solid bamboo")." The Department notes however, that products which have face and/or back veneers of bamboo but have a core that is not bamboo are explicitly included in the language of the scope of the investigation. Accordingly, this exclusion applies only to products that have a face and a back veneer of bamboo and a core of bamboo, and which does not contain any other hardwood or softwood, or any other material in the core. The excluded products must be made from bamboo entirely, and adhesives.

Comment 6B: Bamboo Flooring

[134] See Letter to the Secretary of Commerce from Petitioners regarding scope clarification comments (April 24, 2013).
[135] See Sections 701 and 731 of the Act.
[136] See, e.g., Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17430 (March 26, 2012). .
[137] See Diversified Products Corp. v. United States, 572 F. Supp. 883, 887 (CIT 1983) (acknowledging that Commerce "has the authority not only to define the scope of an antidumping duty investigation but also to clarify the statement of its scope") (internal citation omitted); see also Mitsubishi Elec. Corp. v. United States, 802 F. Supp. 455, 458 (CIT 1992).

Teragren LLC, the Bamboo Flooring Companies[138] and Lumber Liquidators' Case Briefs:

- Teregren LLC argues that finished, ready-to-install bamboo flooring should be excluded from the scope because it is a finished product rather than a raw material, and it is further worked beyond a flat panel because it has the tongue and groove profiles on the four sides.
- The Bamboo Flooring Companies argue that bamboo flooring should be excluded because: 1) it does not have wood veneers on the face and back; 2) flooring is further worked with a tongue and groove on the edges; 3) flooring comes in different sizes than plywood; and 4) bamboo is the essential characteristic.
- Lumber Liquidators argues that bamboo flooring should be excluded because: 1) there is very little being produced; 2) bamboo flooring and the merchandise under consideration have very different uses; 3) there are multiple different production processes used in constructing bamboo flooring which are different than those used to manufacture the merchandise under consideration.

Petitioners' Rebuttal Brief:

- Petitioners agree that multilayered wood flooring with a face veneer of bamboo is excluded from the scope of these investigations; however, Petitioners do not agree that any restrictions to the size or dimensions of the products covered should be included in the scope because the merchandise under consideration can be cut to size.

Department's Position: We agree that bamboo flooring is not included in the scope of the investigations as Petitioners indicate this is not a product from which they seek relief. Specifically, Petitioners have agreed with Teregren LLC and the Bamboo Flooring Companies that bamboo flooring is a product which is "separate and apart from hardwood and decorative plywood (with or without a bamboo face)."[139] Accordingly, we are amending the existing exclusion for wood flooring as follows: "The scope of these investigations excludes the following items: … (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A-570-970 and C-570-971 (published December 8, 2011), and additionally, multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo."

Comment 6C: <u>Structural Plywood</u>

Petitioners' Case Brief:

- It is Petitioners' understanding that all (or almost all) structural plywood is stamped at the place of manufacture, prior to importation into the U.S. If the scope allows products to be imported before they are stamped and tested it would open a route for circumvention of the order.
- Petitioners have no objection to including PS 2 in the scope language.

Taraca Pacific's Rebuttal Brief:

[138] Anji Hefeng Bamboo & Wood Company, BR Custom Surface, ZT Industry, Co., Ltd. Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd., and Zhejiang Goldentouch Bamboo Technology Co., Ltd. (collectively "Bamboo Flooring Companies").

[139] <u>See</u> Letter to the Secretary of Commerce from Petitioners regarding rebuttal scope brief (June 17, 2013) ("Petitioners' Rebuttal Scope Brief") at 1-2.

- The Department should include an explicit exclusion of PS 2-09 and PS 2-10 in the language of the scope.

Department's Position: In the Preliminary Determination, we agreed with Petitioners that the scope language properly states that only products which are manufactured and stamped to meet structural standards are excluded from the scope. As no other parties have commented on the Preliminary Determination that products must be stamped in accordance with structural plywood standards prior to importation in order to be excluded, and Petitioners agree with the Preliminary Determination, we will not address this issue any further.

Additionally, in the Preliminary Determination we stated that we preliminarily agreed with Taraca Pacific that products which are manufactured and stamped to meet PS 2-09 or PS 2-10 should be excluded from the scope of the investigation. Additionally, we noted that Petitioners explicitly stated that they have no objection to excluding products which meet PS 2-09 or PS 2-10. As we have not received any additional comments from interested parties, and because we understand that it was Petitioners' intent to exclude all structural plywood from the scope of the investigation, we are amending the existing exclusion for structural plywood as follows: "The scope of the investigation excludes the following items: … (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured and stamped to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the "bond performance" requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard."

Finally, we note that the product standards which are specified as excluded from the scope include the following language:

> Certification: Plywood represented as being in conformance with this standard shall bear the stamp of a qualified inspection and testing agency which either inspects the manufacture (with adequate sampling, testing of bond line, and examination for quality of all veneers) or (2) has tested a random sampling of the finished panels in the shipment being certified for conformance with this standard.[140]

Additionally, we note that all standards include language regarding the information that may or may not be included on any labels affixed to the product prior to shipment or retail sale (e.g., Section E3.2.1 of PS 1-09). However, any guidance regarding labeling does not replace or supplant the requirement that the products bear the stamp of a qualified inspection and testing agency. Only structural plywood which bears this stamp upon entry is excluded.

Comment 6D: "Very Thin" Plywood

Lumber One and Elberta's Case Briefs:

[140] See Letter to the Secretary of Commerce from Petitioners, "Petition for the Imposition of Antidumping and Countervailing Duties, Supplemental Submission" (October 15, 2013) at Exhibit Supp I-16; see also Letter to the Secretary of Commerce from Taraca Pacific, Inc., "Comments on the Scope of the Investigation" (December 10, 2013) at Attachment 2.

- The domestic industry does not produce the very thin plywood (under 5.5 and 3mm) which Lumber One uses in constructing ammunition boxes for military use, and which Elberta uses in constructing boxes for agricultural products.
- The thin plywood used by Lumber One and Elberta is not used for indoor or decorative purposes.
- The adhesive used is an exterior grade and the product meets Petitioners' description of structural plywood.

Petitioners' Rebuttal Brief:

- Petitioner argues that Lumber One and Elberta's claims that the domestic industry does not manufacture very thin plywood are false.
- Lumber One and Elberta's assertion that certain adhesives are resistant to certain environmental factors should not be sufficient to conflate the product as "structural plywood." Only products which are manufactured and stamped to a structural standard are excluded.

Department's Position: We do not agree with Lumber One and Elberta that very thin plywood should be excluded from the scope of these investigations. As an initial matter, the scope clearly states that "{a}ll hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length)." Although Lumber One and Elberta assert that the United States plywood industry does not produce the type of thin plywood they use, they have not provided evidence in support of their claim, and in fact, Petitioners have stated on the record that "more than one petitioning company currently manufactures products of these thicknesses."[141] Additionally, section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).[142] However, neither the Statute, nor the Department's regulations, require the domestic like product to be identical to the scope of the investigations. Further, despite Lumber One and Elberta's arguments that the "very thin" plywood they use is not produced by the domestic industry, there is no regulatory or precedential support for concluding that specific products within the class or kind of merchandise which are not produced by the domestic industry cannot or should not be covered by the scope of the investigations.

Lumber One and Elberta also argue that their plywood is distinct from the merchandise subject to the scope of these investigations because it is not decorative, and is used to construct crates and boxes, which is not one of the stated uses of the merchandise under consideration. However, the Department has a general preference for scope definitions which are not dependent on the end-use of the product, to ensure ease of administrability for U.S. Customs and Border Protection ("CBP") to apply the scope upon importation. Products which meet the description of the language of scope of the investigations are necessarily covered by the scope, regardless of their intended use. Accordingly, Lumber One and Elberta's arguments that their products are not "decorative" are not sufficient for the Department to exclude merchandise which otherwise meets the description of the scope from these investigations.

[141] See Petitioners' Rebuttal Scope Brief at 3.
[142] See Initiation at 65173.

Finally, Lumber One and Elberta argue that their very thin plywood is manufactured with a proprietary adhesive which is meant to withstand extreme moisture and temperatures. Therefore, Lumber One and Elberta argue that their plywood meets Petitioners' definition of structural or industrial plywood, which is excluded from the scope of these investigations. We agree with Petitioners that the use of certain adhesives is not sufficient to define Lumber One and Elberta's plywood as structural such that it should be excluded from the scope. The scope language specifically states that "The scope of these investigations excludes the following items: … (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured and stamped to meet U.S. Products Standards … for Structural Plywood…" The plywood Lumber One and Elberta use is neither manufactured nor stamped to any structural standard. Therefore, we are not excluding the very thin plywood used by Lumber One and Elberta from the scope of these investigations because it meets the language and description of the scope and is a product from which Petitioners are seeking relief.

Comment 6E: Other Scope Issues

Petitioners' Case Brief:

- "Veneer cores" are effectively covered by the scope because the wooden outer layers of veneer cores are effectively the face and back veneers.
- Petitioners agree with the Department's Preliminary Determination that products carrying such supply-chain certifications as those provided by the Forest Stewardship Counsel ("FSC") which otherwise meet the scope of the investigation are necessarily covered.

Department's Position: In their case brief, Petitioners commented on two issues which we addressed in the Preliminary Determination, stating that they agreed with the Department's position. Specifically, Petitioners agree with the Department's Preliminary Determination that veneer core platforms are essentially identical to the merchandise under consideration and that such merchandise is subject to the scope of this investigation. Additionally, the Department preliminarily determined that regardless of any supply-chain certification, the products which meet the plain language of the scope are necessarily a product for which Petitioners are seeking relief and are therefore subject to the scope of this investigation. No other parties have commented on these issues since the Preliminary Determination and there is no additional information on the record of these investigations which would require the Department to reconsider its Preliminary Determination with respect to veneer core platforms or FSC-certified products. Therefore, for these final determinations, the Department continues to find that veneer core platforms are covered by the scope of these investigations, and FSC-certified products are not excluded from the scope of these investigations. Accordingly, we are not amending the language of the scope with regard to these products.

Comment 6F: Plywood with a Surface Other Than Wood

Petitioners' Case Brief:

- Plywood products with surface coverings such as paper provide an avenue for intentional circumvention.

CNFPIA, Far East American, Holland Southwest International Inc., Shelter Forest, and UFP Purchasing's Rebuttal Briefs:

- The Department should not accept vague and tardy comments regarding the scope of the case. Petitioners cannot expand the scope of the investigation at this late stage by including products which have a surface coating such as paper. Additionally, Petitioners have an available remedy in the event of circumvention in the anti-circumvention provision of the statute.
- Petitioners' concerns regarding possible circumvention in the future is not an adequate reason to modify the scope as there are already existing remedies within existing laws and regulations.
- The paper-overlay products which are excluded do not compete with the products which Petitioners intended to be covered by these investigations, and the type of paper-overlay products which are under consideration have paper coverings which are permanently adhered to the outer surface of the product.
- The Department should continue to exclude products with surface coatings that obscure the grain and texture of the wood (e.g., phenolic film faced plywood and paper-overlay products), which are distinct from the scope of the investigation.

Department's Position: We agree with CNFPIA, Far East American, Holland Southwest International Inc., Shelter Forest, and UFP Purchasing that products which have an opaque surface coating which obscures the grain, texture or markings of the wood, are properly excluded from the scope of these investigations. Petitioners have not argued that products which have surface coatings which do obscure the grain, texture or markings of the wood were intended to be covered by the scope of these investigations. Additionally, the original description of the products which Petitioners intended to cover included products which had a face veneer which is "sanded, smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing" but did not include products which had opaque surface coatings, such as paper or phenolic film.[143] The types of surface coatings which the Department enumerated in the Preliminary Determination as surface coatings which may obscure the grain, texture or markings of the wood included paper, aluminum, high pressure laminate ("HPL"), MDF, medium density overlay ("MDO"), and phenolic film. Based on the descriptions of these products which were submitted by interested parties prior to the Preliminary Determination, all of these surface coatings are permanently affixed to the surface of the product.[144] Therefore, to ensure ease of administrability for CBP to apply the scope upon importation, we find it appropriate to clarify the language of the scope of these investigations such that the exclusion for plywood with opaque surface coatings applies only to coatings which are permanently affixed. Accordingly, we are amending the existing scope language with regard to surface coatings as follows: "{a}ll hardwood and decorative plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated, unless the surface coating obscures the grain, texture or markings of the wood in a permanent manner. Examples of surface coatings which may not obscure the grain, texture or markings of the wood include, but are not limited to, ultra-violet light cured polyurethanes, oil or oil-modified or water based polyurethanes, wax, epoxy-ester finishes, and moisture-cured urethanes. Hardwood and decorative plywood that has face and/or back veneers which have a permanent and opaque surface coating which obscures the grain, texture or markings of the wood, are not included within the scope of this investigation. Examples of permanently affixed surface coatings which may obscure the grain, texture or markings of wood include, but are not limited to, paper, aluminum, high pressure laminate ("HPL"), MDF, medium density overlay ("MDO"), and

[143] See Initiation at Attachment I.
[144] See, e.g., Letter to the Secretary of Commerce from Far East "Scope Rebuttal Brief" (June 10, 2013) at 3.

phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. The face veneer may be stained."

Comment 7: Selection of Surrogate Country

A. Comparable Level of Economic Development

Petitioners' Case Brief:

- The Department has a legal obligation to include Bulgaria in its evaluation of the primary surrogate country because the list of potential surrogate countries provided by the Office of Policy is non-exhaustive.
- The Office of Policy list explicitly states that parties may comment on countries which are not listed, provided that they submit sufficient information. In its request for comments on potential surrogate countries, the Department noted that the OP List is non-exhaustive, and that interested parties may comment on other countries not on the list, along with sufficient documentation that a certain country meets the statutory criteria.
- Petitioners provided information with respect to Bulgaria showing that Bulgaria was economically comparable to the PRC and a significant producer of comparable merchandise.

Mandatory Respondents' Rebuttal Case Brief:

- It is Department policy to select a surrogate country prior to or at the Preliminary Determination. Petitioners failed to raise a timely challenge to the country list.
- Petitioners have not offered the kind of catastrophic evidence that would justify a change in surrogate country for the final determination.
- In arguing for Bulgaria, Petitioners run afoul of the Department's well-established policy of looking first to the countries listed by its Policy Office for acceptable surrogate countries, which it followed in the Preliminary Determination. Once the Department has concluded that a country on the country lists is suitable, it simply disregards arguments in favor of alternative non-listed countries.
- The Department has never selected an European Union ("EU") member state as economically comparable to the PRC, and doing so now would have broad implications for the very foundations of the Department's NME treatment of the PRC.
- As an EU member state, Bulgaria's international trade policy is determined by EU legislation and goods and services flow freely across the borders of the member states, thus rendering any specific Bulgarian values for labor and imports from other EU Member States meaningless. For instance, over half of all imports of veneer, the primary plywood input, are from other EU Member States. Thus for lack of Bulgarian national administration over these sales, it is impossible to assess the quality of the Bulgarian data as import values.
- The EU should be considered as a whole and the gross national income ("GNI") for the EU as a whole is US$ 34,033, which is not at a level of economic development comparable to the PRC GNI of US$ 4,940.

Liberty Woods et al. Rebuttal Case Brief:

- Petitioners err in arguing that the Department is obligated to go beyond the countries listed on the Department's surrogate value selection memorandum. Under the Department's current practice, the countries on the surrogate value list are determined to be equally

comparable to the PRC in terms of economic development. Unless the Department determines that all of those countries "are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, {the Department} will rely on data from one of these countries."[145]

- In cases where the statutory criteria for selecting a surrogate country are met, it is proper for the Department to select one of the listed countries as the primary surrogate.
- Although it had no obligation to do so, the Department did consider Petitioners' suggestion that Bulgaria should be the surrogate country, but the Department still found the Philippines was superior based on its requirements for surrogate country selection.
- Petitioners do not argue that the Philippines fails to qualify as a surrogate country, but argue that Bulgaria is superior in term of the quality of available data.
- Bulgaria is a member of the EU and the Department has never found an EU member country to be at a level of economic development comparable to the PRC. Because the Department has identified countries that are suitable surrogates, it should not select a less comparable EU member.
- Although the Department has used Bulgarian information to corroborate surrogate data from a primary surrogate country, it has never used Bulgaria as a surrogate country or values for the PRC, and has previously refused to consider Bulgarian price data to value imports in an NME investigation.[146]
- Any suggestion to use EU data to value FOPs for the PRC, or even corroborate values from an economically comparable surrogate country, is generally rejected by the Department.[147] The Department has only rarely used an EU member to value factors used by a PRC industry when the countries on the surrogate country list do not produce comparable merchandise or do not have useable data to value an input.[148]

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[145] See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011), unchanged in final, 77 FR 17021 (March 23, 2012).

[146] See Final Determination of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Romania, 66 FR 49625 (66 FR 49625) ("Steel Flat Products from Romania") and accompanying Issues and Decision Memorandum at Comment 7.

[147] See, e.g., Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review, 77 FR 12556 (March 1, 2012) ("Steel Nails AR2")and accompanying Issues and Decision Memorandum at Comment 9 (finding data from the Europe Union and Germany has no probative value to corroborate input prices from India); Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 10 (rejecting German prices to test reliability of Indian surrogate data); Final Determination of Sales at Less Than Fair Value: Ferrovanadium From the People's Republic of China, 67 FR 71137 (November 29, 2002) and accompanying Issues and Decision Memorandum at Comment 19 (selecting export data from South Africa over import data from Denmark and Ireland, inter alia, to value sulfuric acid); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 13 (rejecting Netherlands price data offered to show Indian price was aberrational), affirmed by Anshan Iron & Steel Co. v. United States, 27 CIT 1234, 1248 (2003) (noting that the Netherlands is "certainly not at a level of development similar to China.")).

[148] See, e.g., Non-Frozen Apple Juice Concentrate From the People's Republic of China: Notice of Preliminary Results of the New Shipper Review, 75 FR 47270, 47272 (August 5, 2010), unchanged in final, 75 FR 81,564 (Dec. 28, 2010); Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439 (Jan. 10, 2003) and accompanying Issues and Decision Memorandum at Comment. 2.

Debua TB et al.'s Rebuttal Case Brief:

- It is the Department's well established policy to rely only on data from the countries listed in the Surrogate Country Memorandum.
- Similarly it is the Department's longstanding policy to benchmark surrogate values only against imports from the list of potential surrogate countries provided in the surrogate country memorandum.[149]
- The Department analyzed the totality of the surrogate value information and determined that the Philippines was suitable as the primary surrogate country and represented the best information available. There is no new record information that would indicate any different outcome in the final determination.
- Changing to Bulgaria now is especially unwarranted and prejudicial because the Department clearly told all parties that it would not consider the issue further for this investigation, and it is inappropriate for Petitioners to raise it in their brief. Because of the Department's announcement, respondents have not expended time and energy to provide further information or analysis on this issue in the way that they would if the issue were still open, and for Petitioners to be able to raise it now, after the Department has definitively ruled, is highly irregular.

Department's Position: Because the Department has determined the PRC to be an NME, and available information does not permit the NV of the subject merchandise to be determined under section 773(a) of the Act, section 773(c) directs that then the NV shall be determined on the basis of the value of the FOPs. Section 773(c)(1) also provides that the valuation of the FOPs shall be based on the best available information regarding the values of such factors in a market economy country considered to be appropriate. Section 773(c)(4) of the Act requires, to the extent possible, that the Department value the FOPs in a surrogate country that is: (A) at a level of economic development comparable to the PRC; and (B) a significant producer of comparable merchandise. Using 2011 GNI data, the Department provided parties with a list of potential surrogate countries (i.e., Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand) found to be at the same level of economic development as the PRC.[150]

Mandatory Respondents, Liberty Woods et al., and Dehua TB et al. argue that Bulgaria is not at a level of economic development comparable to the PRC, and that, because Bulgaria was not listed on the Office of Policy surrogate country list, that the Department should not consider it further. Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may determine that a country is at a level of economic development comparable to the NME country. However, section 351.408(b) of the Department's regulations state that in making this determination the Department will place primary emphasis on per capita GDP as the measure of economic comparability. It is the Department's long-standing practice to identify

[149] See Saccharin from the People's Republic of China: Final Results of the 2005-2006Antidumping Duty Administrative Review, 72 FR 51800 (Sept. 11, 2007) and accompanying Issues and Decision Memorandum at Comment 2 ("While in the past the Department has used U.S. prices to benchmark surrogate values, ... , the Department's current practice has been to benchmark surrogate values against imports from the list of potential surrogate countries for a given case, if available.")

[150] See Letter to All Interested Parties from Catherine Bertrand, Program Manager, Office 9 regarding request for request for surrogate country and surrogate value comments (December 4, 2012) at Attachment I ("Surrogate Country Memo") at 2.

countries at the same level of economic development as the PRC, on the basis of per capita GNI data reported in the World Bank's World Development Report [151] In this case, the GNI data published in 2012 was based on data from the year 2011.[152]

As explained in our Surrogate Country Memo, on the basis of GNI, the Department considers Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand all to be at a level of economic development comparable to the PRC for surrogate country-selection purposes.[153] The annual GNI levels for the list of potential surrogate countries ranged from US$ 2,210 to US$ 7,660.[154] Based on Bulgaria's GNI of $6,640, the Department finds that Bulgaria also to be at the same level of economic development as the PRC.

The Surrogate Country Memo explicitly states that the list is not exhaustive, and that we may consider "other countries on the case record if the record provides {us} adequate information to evaluate them."[155] In contrast to the reason stated in the Preliminary Determination, any market economy country that is at the same level of economic development as the nonmarket economy country under investigation or review will be given equal consideration for the purposes of selecting a surrogate country regardless of whether this country is on the surrogate country list. The list itself provides a starting point for what set of countries the Department considers being at the same level of economic development as the PRC. In this case, Petitioners have identified a country not on the Surrogate Country List but at the same level of economic development as the PRC, based on Bulgaria's GNI.

Although parties have argued that it is prejudicial for the Department to consider Bulgaria for the final determination because it stated in the Preliminary Determination that it would not consider Bulgaria further, we disagree. Importantly, the Department's statement that we would not consider Bulgaria further was made within the context of a preliminary determination. Moreover, at the time of the Preliminary Determination the Department requested that parties submit additional information to value FOPs, as well as written argument in the form of case and rebuttal briefs, for consideration in the final determination. 19 CFR 351.309(c)(2) states that "{t}he case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results." The Department's Preliminary Determination does not preclude any interested party from raising any argument for the final determination, nor does it preclude the Department from reconsidering record evidence and argument for the final determination. Further, as Petitioners timely submitted additional Bulgarian surrogate value information after the Preliminary Determination, as well as extensive argument in their case brief regarding the selection of Bulgaria as the primary surrogate country, parties were aware that the issue of surrogate country selection would be addressed for the final determination, and had an opportunity to, and did, submit rebuttal surrogate value information as well as rebuttal case briefs.

Additionally, Mandatory Respondents argued that Petitioners failed to raise a timely challenge to the surrogate country list. However, we note that Petitioners in their initial surrogate country

[151] See Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) ("Pure Magnesium 08-09") and accompanying Issues and Decision Memorandum at Comment 4.
[152] See Surrogate Country Memo at 2.
[153] See id. at 1.
[154] See id. at 2.
[155] See Surrogate Country List.

comments argued that the Department should consider countries not included in the initial surrogate country list, which was the first opportunity to raise concerns related to the selection of the surrogate country.[156] Therefore, we do not find that Petitioners arguments regarding the selection of a country other than those listed by the Office of Policy were in any way untimely.

Mandatory Respondents have argued that there is a lack of "catastrophic" evidence which would require the Department to reconsider the Preliminary Determination with regard to surrogate country selection. However, there is no standard for "catastrophic" evidence in either the statute or the Department's regulations. As in every investigation and administrative review, the Department requested additional factual information and argument from parties following the Preliminary Determination, and has taken the entirety of the case record into account for this final determination. There is no additional standard that there must be catastrophic evidence on the record in order for the Department to reconsider a preliminary decision. Additionally, contrary to parties' assertions and as discussed below in Section C, the Department did not fully analyze Bulgaria as a potential surrogate country prior to the Preliminary Determination due to the fact that it was not considered a significant producer and because we preliminarily determined that there were suitable options among those countries on the list of surrogate countries. However, there is additional information on the record which provides sufficient cause for the Department to reconsider its decision, particularly with respect to Bulgaria as a significant producer.

Finally, the Department disagrees with parties' assertion that because Bulgaria is a member of the EU, that we should use the GNI of the EU as a whole, rather than considering Bulgaria an independent nation state for the Department's surrogate value purposes. There is no basis in law, regulation, or practice that suggests the Department must aggregate individual nation states when making a comparison of the level of economic development to the NME country. In fact, section 773(c)(4) of the Act explicitly provides for a "country" or "countries" which is universally understood to refer to independent nation states as opposed to customs, monetary, or political unions. Moreover, the World Bank data, which the Department relies on in determining the GNIs of the countries on the surrogate country list, collects data for, and reports the GNI of, Bulgaria as an independent nation.[157] Furthermore, although the World Bank does publish an overall GNI of the EU, which includes such countries as Sweden and Denmark, which have GNIs that are far above the GNI of the PRC (US$ 53,150 and US$ 60,120, respectively);[158] it also publishes the GNIs of individual countries within the EU. The fact that certain EU member states have GNIs which are much higher than the PRC (and other countries on the Office of Policy surrogate country list) does not serve as sufficient reason for discounting the individually reported GNI of Bulgaria.

Mandatory Respondents attempt to impugn the reliability of Bulgarian data by claiming that "the work forces of Bulgaria and all other EU Member States, as well as all goods and services, flow freely across the borders of the national states, rendering any specific Bulgarian values for labor and imports from other EU Member States meaningless."[159] Specifically, Mandatory Respondents point to the fact that over half of Bulgaria's imports of veneers are from EU

[156] See Letter to the Secretary of Commerce from Petitioners regarding Surrogate Country Comments ("Petitioners' Surrogate Country Comments") (February 5, 2013) at 3-4 and Exhibits 4-6.
[157] See Petitioners' Surrogate Country Comments at Exhibit 3.
[158] See id.
[159] See Mandatory Respondents' Case Brief at 12-13; see also Mandatory Respondents Pre-Prelim Comments at 22-23.

member states.[160] However, the Department does not find the fact that a country imports goods from geographically proximate countries negatively impacts the reliability of the data. Indeed, the surrogate values used in the Preliminary Determination included significant Philippine imports from neighboring countries.[161] Consequently, Mandatory Respondents' contention that Bulgarian data is unreliable because of trading activity with its neighbors is unpersuasive.

Additionally, the Department finds parties' arguments that we have not previously selected Bulgaria or any other EU member state as a surrogate country to be unconvincing. The surrogate country selection criteria do not include or consider whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each proceeding based on the facts of that individual proceeding, regardless of whether the potential surrogate countries under consideration have been previously selected as surrogate countries. This is particularly the case of in an investigation, where surrogate values and FOPs have not been analyzed by the Department in any previous segments of the proceeding. Further, parties cite Steel Flat Products from Romania as evidence that the Department has previously refused to use Bulgarian data to value factors in an NME case.[162] However, for the purposes of that determination, Bulgaria was considered to be a NME, which is no longer the case.[163] Accordingly, based on the facts and argument above, the Department considers Bulgaria to be at the same level of economic development as the PRC and a viable candidate for surrogate country selection.

B. Significant Producer of Comparable Merchandise

Petitioners' Case Brief:

- For the Preliminary Determination the Department stated that Bulgaria had no exports of comparable merchandise, however, this was incorrect and Petitioners have clarified the record on this point and have provided data to demonstrate that Bulgaria is a significant exporter, net exporter, and producer of comparable merchandise.[164]

Mandatory Respondents' Rebuttal Brief:

- The Department's Preliminary Determination that Bulgaria is not a significant producer is grounded in the statute, and having failed to meet this criterion, Bulgaria does not deserve any further consideration.
- The Philippines meets both statutory criteria (it is at a level of economic development comparable to that of the PRC, and it is a significant producer of comparable subject merchandise), and these facts were never challenged.
- Among the countries on the surrogate country list, the Department deemed only the Philippines and Indonesia as significant producers of plywood.

[160] See id.
[161] See Preliminary Factor Valuation Memorandum at Attachment 5.
[162] See Steel Flat Products from Romania and accompanying Issues and Decision Memorandum at Comment 7.
[163] Compare Import Administration Policy Bulletin 03.1 "Market or Non-Market Economy Country Designation," dated February 28, 2003 ("Policy Bulletin 3.1") at http://ia.ita.doc.gov/policy/bull03-1.html, with Steel Flat Products from Romania, dated September 28, 2001.
[164] See Letter to the Secretary of Commerce, from Petitioners, "Hardwood and Decorative Plywood from the PRC" (June 17, 2013) at Exhibit 1.

- The Philippines is a "mid-tier" producer of comparable merchandise, and has three times more production than Thailand, while Bulgaria has a tiny or insignificant amount of production and produces one tenth of the amount that the Philippines does.[165]
- The Department's Policy Bulletin 04.1 directs that a judgment on whether a country is a significant producer of comparable merchandise will be made "consistent with the characteristics of world production of, and trade in, the comparable merchandise," and the standard for significant producer will vary from case to case. The Policy Bulletin also explains that "if there are ten large producers and a variety of small producers, 'significant producer' could be interpreted to mean one of the top ten," and that when there are tiers of medium and large producers, intermittent production such as that in Bulgaria is not significant.
- The proliferation of financial statements from the Philippines is further evidence that it is a significant producer.
- Petitioners claim that new evidence establishes Bulgaria as a "significant exporter" and "net exporter," but the evidence of a small amount of exports from Bulgaria is not sufficient to demonstrate that it is a "significant" producer.
- The fact that Bulgaria did have a small quantity of exports during the POI may be distorted by transshipment among countries because Bulgaria is part of a customs union (i.e., the EU) and exports and imports may not be reflective of actual origin or production.

Department's Position: Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered significant production. Mandatory Respondents argue that the Department ought to consider that the amount of Bulgarian exports and production is insignificant when compared to the demonstrated production of other potential surrogate countries, specifically with regard to the Philippines. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as Policy Bulletin 4.1 for guidance on defining significant production.

Policy Bulletin 4.1 states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[166] In the Preliminary Determination we explained the following:

> In order to determine whether the above-referenced countries are significant producers of comparable merchandise, we looked to see if any exported merchandise comparable to the merchandise under consideration. Accordingly, the Department obtained export data for the six-digit HTS sub-headings listed in the description of the scope of this investigation (i.e., 441210, 441231, 441232, 441239, 441294, and 441299) for each of the seven potential surrogate countries listed above. After reviewing this export data, the Department preliminarily determines that all countries on the surrogate country list are significant producers of comparable merchandise (i.e., exported merchandise under the six-digit basket HTS categories included in the scope), and, therefore, satisfy the second criterion

[165] See Letter to the Secretary of Commerce from Mandatory Respondents, "Surrogate Country Comments" (February 7, 2013) at Exhibit 2 ("FAOSTAT Production Data").
[166] See Policy Bulletin 4.1, at 2.

> of section 773(c)(4) of the Act.[167] Bulgaria had no exports of comparable merchandise during the POI, and is not on the surrogate country list.[168]

Although Mandatory Respondents argue that we determined that Bulgaria was not a significant producer of comparable merchandise in spite of evidence that Bulgaria did have a certain amount of exports and production of comparable merchandise during the POI; that is not the case. As is clear from our write-up in the Preliminary Determination, the Department determined that the countries on the Office of Policy list were significant producers due to the fact that they all "exported merchandise under the six-digit basket HTS categories included in the scope."[169] Further, the Department found that Bulgaria had no exports of comparable merchandise during the POI[170] based on our inaccurate filtering of the data obtained from the Global Trade Atlas ("GTA").[171] However, Petitioners have placed data on the record of this proceeding which demonstrates that the Department's preliminary conclusion that Bulgaria had no exports of comparable merchandise was incorrect.[172] Specifically, Petitioners placed GTA data on the record demonstrating that Bulgaria did have exports of comparable merchandise during the POI.[173] Therefore, we find that Bulgaria is a producer of comparable merchandise because it exported merchandise under the six-digit HTS categories included in the scope, just like the other countries on the Office of Policy list.

Mandatory Respondents further argue that Bulgaria is not a significant producer when compared to the Philippines because its production is a fraction of that in the Philippines. Policy Bulletin 4.1 provides additional guidance on how the Department should determine whether production is "significant":

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

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[167] See Memorandum to the File from Frances Veith, Senior International Trade Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9 "Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Surrogate Values for the Preliminary Determination" (April 29, 2013) ("Preliminary Factor Valuation Memorandum")

[168] See id.

[169] We note that Mandatory Respondents' claim that only the Philippines and Indonesia were "significant producers" of plywood is based on their own analysis of global production data for 2011, which is not specific to the POI, and their own assignation of "tiers" based on relative production. See Letter to the Secretary of Commerce from Mandatory Respondents "Rebuttal Brief of Mandatory Respondents" (July 15, 2013) ("Mandatory Respondents' Rebuttal Brief") at 3-5. Further, Mandatory Respondents' contention that Thailand and Bulgaria "cannot reasonably be characterized as countries with 'significant' producers" falls flat in the face of the production data submitted by Mandatory Respondents themselves, as a reasonable mind cannot consider the production quantities of Thailand and Bulgaria, at 120,000 and 35,427 cubic meters, respectively, insignificant quantities. See Mandatory Respondents' Rebuttal Brief at 4 n1; FAOSTAT Production Data at 1-2.

[170] See Preliminary Determination and accompanying Decision Memorandum at 10.

[171] Compare Preliminary Factor Valuation Memorandum at Attachment 1 with Letter to the Secretary of Commerce from Petitioners regarding Hardwood and Decorative Plywood from the PRC (June 17, 2013) ("Petitioners' Post-Preliminary Surrogate Value Comments") at Exhibit 1.

[172] See Petitioners' Post-Preliminary Surrogate Value Comments at Exhibit 1.

[173] See id.

Mandatory Respondents argue that, based on FAOSTAT data for 2010-2011, the Philippines is the 17th largest producer of plywood in the world.[174] Comparatively, the PRC is the largest, Indonesia is the fourth largest, and Bulgaria is the 53rd largest producer of plywood.[175] Mandatory Respondents argue that this data conclusively demonstrates that Bulgaria's plywood production is not significant in comparison to the Philippines or Indonesia, but is instead "intermittent and insignificant." However, in reviewing the full FAOSTAT dataset placed on the record by Mandatory Respondents, we find that there are 130 countries listed, and 107 of them have reported plywood production. In comparison with the full data set, we do not find that Bulgaria's position as the 53rd largest producer is insignificant. Further, Bulgaria's 2011 production, according to FAOSTAT, is 35,427 cubic meters, which is not an insignificant amount such that it would be considered an "intermittent" producer, or be disqualified from consideration as a potential surrogate country.

The Policy Bulletin offers guidance on how the Department could potentially interpret the term "significant producer" within the context of a proceeding (i.e., "if there are ten large producers and a variety of small producers, 'significant producer' could be interpreted to mean one of the top ten").[176] While the Policy Bulletin provides additional guidance in the absence of specific information in either the Department's regulations or the Statute, it also states that "{b}ecause the meaning of 'significant producer' can differ significantly from case to case, fixed standards… have not been adopted."[177] Thus, we find that the particular examples used by parties to demonstrate that Bulgaria is not a significant producer (e.g., that it is not in the top ten, or top "tier" of producers), do not preclude the Department from determining that Bulgaria is a significant producer within the specific context of this proceeding. Further, with regard to parties' argument that Bulgaria's production is insignificant when compared to other countries on the list, the Policy Bulletin clearly negates such an analysis and states that "{t}he extent to which a country is a *significant* producer should not be judged against the NME country's production level or the comparative production of the five or six countries on OP's surrogate country list."[178]

Therefore, given the above, based on POI specific export data of comparable merchandise, as well as 2011 plywood production data from FAOSTAT, we find that all of the countries on the Office of Policy list and, in addition, Bulgaria, are exporters and/or producers of comparable merchandise, and thus, are significant producers of the comparable merchandise.

C. Data Considerations

FACE AND CORE VENEER INPUTS

Petitioners' Case and Rebuttal Briefs:

- Bulgarian import data for HS 4408.90.95 represents the best information available on the record to value the core veneers used by Respondents in the production of merchandise under consideration, because it is contemporaneous to the POI, represents a broad market average,

[174] See Petitioners' Surrogate Country Comments at Exhibit 6.
[175] See id.
[176] See Policy Bulletin 4.1 at 3.
[177] See id.
[178] See id.

and is very specific to core veneers used by Respondents. Alternatively, the Philippine GTA data for core veneer is non-contemporaneous and is only from one country (e.g., the data is only from August 2009 for imports from Singapore), is not specific and the Department has rejected similar data in the past.[179]

- Bulgaria's import data is specific to the thicknesses of core veneers used by Mandatory Respondents and is made up predominantly of rotary-cut poplar veneers sheets (up to 70 percent based on Petitioners' estimate).
- The Philippine value for core veneers under HTS 4408.90.90 is very broad and vague (i.e., "sheets for plywood").
- Bulgarian import data for HS 4408.90.85 represents the best information available on the record to value the face veneers used by Respondents in the production of merchandise under consideration. This data is contemporaneous to the POI, represents a broad market average, and is specific to the thickness and density of the face veneers used by Mandatory Respondents.
- The Philippine value for face veneers under HTS 4408.90.1000 is unreliable when analyzed relative to other benchmarks on the record, such as data from other surrogate countries, U.S. import statistics, and respondents' purchase and consumption prices.
- Official import data from the Philippine Bureau of Import Statistics show that the imports into the Philippines from Malaysia during the POI were from Samling Plywood (Bintulu), which is an interested party to this investigation, thus demonstrating that the Philippine face veneer import data are significantly tainted and must be disregarded.
- The domestic Philippine prices placed on the record by Mandatory Respondents as part of their "veneer cost study" are unreliable, and do not represent the best and most specific information available to value the core and face veneers used by Mandatory Respondents.
  - The values in Respondents' Veneer Cost Study collected in the Davao region were for veneer logs rather than veneer sheets.
  - The price data in Respondents' Veneer Cost Study collected in the Caraga Region were on a per-sheet basis and Mandatory Respondents provided no support for their assumption that the veneer sheets were 4'x8', which was the basis for the calculated price per cubic meter.
  - Mandatory Respondents do not provide support for their assumption that the price data include value added tax ("VAT") but exclude duties and other costs.
  - Mandatory Respondents' single veneer price is for a basket category which includes both core and face veneers.
  - The data in Respondents' Veneer Cost Study represents species of wood that were not used by Mandatory Respondents.

Mandatory Respondents', Dehua TB et al.'s, and Liberty Woods et al.'s Case and Rebuttal Briefs:

- The Department's policy is to favor a single surrogate country for all surrogate values. The Department already compared surrogate values from the Philippines to those of Bulgaria and Thailand, and deemed the Philippines data to be superior.
- The Department should rely on the Veneer Cost Study to value all veneers (i.e., face, back and core) for the final determination.

[179] Citing Pure Magnesium From the People's Republic of China: Preliminary Results of 2011-2012 Antidumping Duty Administrative Review, 78 FR 34646 (June 10, 2013) ("Pure Magnesium 11-12 Prelim") and accompanying Decision Memorandum at 12.

- The Veneer Cost Study is a collection of publicly available veneer pricing data from the key Philippine regions of Caraga and Davao, which account for over 80 percent of Philippine veneer production. The prevailing pricing in the remaining regions would be similar to those in Caraga and Davao, so the study is representative of the Philippines as a whole.
- The domestic veneer prices in the Veneer Cost Study are specific to the veneers that are used to product the merchandise under consideration, are contemporaneous, and closely duplicate the purchasing experience of Mandatory Respondents, who are located in plywood producing regions close to their veneer suppliers.
- The prices in the Veneer Cost Study are for face and inner plies, and the thickness of one region report indicated the veneer thickness at 3.6, which is close to the veneer thickness consumed by respondents.
- Petitioners' attempts to undermine the Veneer Cost Study lack merit. The price reports in the study are official statistics that are publically available upon request.
- Petitioners' attack on the Veneer Cost Study was misleading and inaccurate, and Petitioners' attempt to undermine the study were based on selective conversations with low level officials, and none of the affidavits or certifications submitted by Petitioners succeed in undermining the public availability or reliability of the veneer pricing obtained by senior officials and presented in the Veneer Cost Study.

- There is no record evidence supporting Petitioners' assertion that the Malaysian import data undermines the reliability of the Philippine data because the sales were not arm's length transactions. Namely, the imports into the Philippines were made by a different company, and five-year historical data has been very consistent, which indicates that no party has tainted the pricing.
- The density of the Philippine imports of face veneers is similar to the density of face veneers used by Mandatory Respondents.
- Dehua TB et al. argue that the data submitted by Petitioners that they state is from the Philippine Bureau of Import Statistics is unreliable and has been shown to be false by Dehua TB et al.'s own researcher. Therefore, it cannot be reasonably relied upon by the Department.
- Liberty Woods et al. argue that Petitioners' arguments with respect to the exact nature of the merchandise that makes up the 2009 imports from Singapore into the Philippines are unsubstantiated by record evidence.
- Petitioners' argument that the Bulgarian data are superior to the Philippine data because the thicknesses are specific to Mandatory Respondents' veneer inputs is immaterial because the Bulgaria data are not specific to face and core veneers.
- Bulgaria is the recipient of subsidies for the forestry industry and the Department has a long history of disregarding any data tainted by subsidies.

Department's Position: Policy Bulletin 4.1 states that if more than one country is at a level of economic development comparable to that of the NME and is a significant producer, "then the country with the best factors data is selected as the primary surrogate country."[180] Importantly, the Policy Bulletin explains further that "data quality is a critical consideration affecting surrogate country selection" and that "a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable."[181]

[180] See Policy Bulletin 4.1 at 4.
[181] See id.

We have concluded for the final determination that Bulgaria, Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand are at a level of economic development comparable to the PRC and significant producers of comparable merchandise. We then examined the available data on the record with respect to these countries to determine which contained the best available information for valuing the primary inputs to the merchandise under consideration, core and face veneers.[182] We note that no party is arguing for, nor does the record contain suitable surrogate values from, Colombia, Costa Rica, Indonesia, South Africa, or Thailand. Therefore, we determine that these countries are not suitable as the primary surrogate country for this final determination. Although interested parties did provide certain data on the record and some argument with respect to Indonesia and Thailand,[183] no party placed complete surrogate value data on the record for either of these countries, nor did any parties argue in case or rebuttal briefs that either of these countries should be selected as the primary surrogate country for the final determination. Therefore, at this late stage in the investigation, after the deadline for submission of factual information, we are not considering these countries as potential primary surrogate countries. However, the record does contain complete surrogate value data from Bulgaria and the Philippines.

As stated in the Preliminary Determination, if more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.[184] When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[185] Since the Preliminary Determination, Petitioners and other interested parties placed significant additional data on the record with respect to both Bulgaria and the Philippines. In particular, Mandatory Respondents placed on the record their Veneer Cost Study,[186] and Petitioners placed additional data on the record with respect to Bulgaria. Below we discuss in detail the available record information with regard to the main inputs to the merchandise under consideration: face and core veneers.

Mandatory Respondents' Veneer Cost Study

With regard to the Veneer Cost Study, we find that while it does satisfy certain of the factors which we use to evaluate potential surrogate values, it is not the best available information on the record to value the face and core veneers used by Mandatory Respondents. Although Petitioners have argued that the data is not publicly available, we find that the information on the record regarding the public availability of the data, as well as the affidavits included in the Veneer Cost Study that describe the collection methodology and a statement that the information is publicly

[182] See "Public Hearing in the Matter of: the Administrative Review of the Antidumping Duty Investigation on Hardwood and Decorative Plywood from the Peoples' Republic of China" (July 25, 2013) ("Hearing Transcript") at 36 (Gregory Menegaz on behalf of Mandatory Respondents: "The financials and the veneers obviously are drivers of the margins. Just like in a steel case, steel and financials would be drivers of margins.").
[183] See Preliminary Decision Memorandum at 11.
[184] See Preliminary Decision Memorandum at 10-11; Policy Bulletin 4.1 at 4.
[185] See id.
[186] See Letter to the Secretary of Commerce from Mandatory Respondents "Surrogate Values for the Final Determination" (June 17, 2013) ("Respondent Post-prelim SV Comments") at Exhibit 1 ("Veneer Cost Study").

available "upon request,"[187] indicates that it is reasonably publicly available. However, we find the claim that the information contained in the study reasonably represents country-wide data in the Philippines wholly unsupported by any evidence in the study.[188] Further, as detailed below, the Department finds that there are other serious concerns with regard to the Veneer Cost Study that cannot be resolved by the information on the record, and which cause us to conclude that it is not the best available information with which to value core and face veneers on the record.

As an initial matter, we agree with Petitioners that the Veneer Cost Study makes two assumptions which are unsupported by record evidence, and which call into question the final price which Mandatory Respondents argue should be applied to their face and core veneer inputs. Specifically, in order to arrive at a per-cubic meter value for the Caraga region, the Veneer Cost Study assumes a standard size for each sheet of veneer.[189] Although Mandatory Respondents argue that the assumed size of 4' by 8' per sheet is reasonable, and that the calculated price per cubic meter is similar to that reported by the Davao region[190] (and is therefore assumed to be reasonable), there is no information on the record regarding the average face or core veneer panel size in the Philippines. As the dimensions of the veneer sheets are integral to the calculated per-cubic meter value of veneers in the Veneer Cost Study, the lack of information on the record regarding the actual dimensions calls the per-cubic meter value from the Caraga region into question. Additionally, Petitioners point out that the Veneer Cost Study assumes that "price data include value added tax {'VAT'} but exclude duties and other costs."[191] Although Mandatory Respondents counter that the prices are clearly retail prices and necessarily include VAT, they do not support their assertion that the values exclude all other duties and costs. As the Department has a preference for values which are entirely tax and duty exclusive, this unsupported assumption undermines Mandatory Respondents' claim that the Veneer Cost Study is the best information on the record. Notwithstanding the fact that the title of the study explicitly refers to "cost," we note that the study itself refers alternatively to price and cost. Although Mandatory Respondents refer to the "retail price" in their case and rebuttal briefs, it is unclear from the original study whether the ultimate values refer to cost or price. For example, page four of the Veneer Cost Study states: "Other veneer data including cost information is collected…" and page five states: "Veneer Cost: Costs were converted to US Dollars from Philippine Pesos." Given that discrepancy, the Department cannot determine that the Veneer Cost Study contains the appropriate data by which to value veneers for this final determination, as such data must necessarily be related to market value rather than cost of production.

[187] See id.
[188] While the study claims that the two regions for which data was gathered accounts for over 80 percent of production and that the prices from the remaining four production regions, which account for 20 percent of total production, would be similar to those in the reporting regions, the only support for this claim is a statement from one of the contributing consultants ("Dr. Foronda confirmed that Regions 11 and 13 represent more than 80 percent of plywood and veneer production in the Philippines"). Notably, this statement is immediately followed with the admission that "{r}eports from the other four production areas in Mindanao that collectively represent a comparatively minor percentage of total plywood and veneer production in the Philippines…have not yet been received." Thus, it is unclear how these claims are supported by any factual information. Accordingly, we cannot accord any weight to this data or the unsupported claims regarding regional production percentages. See Veneer Cost Study at 4-5.
[189] See Veneer Cost Study at 21.
[190] See Mandatory Respondents' Rebuttal Brief at 30-31; Veneer Cost Study at 9-19.
[191] See Letter to the Secretary of Commerce from Petitioners regarding case brief (July 9, 2013) ("Petitioners' Case Brief") at 23, citing Veneer Cost Study at 5.

In addition to the above concerns related to the Veneer Cost Study's assumptions, there is the greater issue of whether the values provided in the Veneer Cost Study are specific to the inputs used by Mandatory Respondents. In their case brief, Mandatory Respondents stated that "the Department should rely on these prices, exclusive of VAT and in cubic meter, for the final determination values of all veneers-face, back and core."[192] In other words, Mandatory Respondents are arguing that the Veneer Cost Study is the best information on the record and, accordingly, a single value should be applied to all veneer inputs used by both respondents, regardless of whether the veneer is used for the face or core. However, the Department finds that there is extensive evidence on the record of this proceeding which supports a finding that face and core veneers are distinct inputs, which carry different characteristics, costs, and values, and are individually important to the normal value of the final product. For example, in its comments regarding the appropriate product characteristics to include in the CONNUM, Senda Fancywood provided the following narrative with regard to face and back veneers:

> Typically, plywood that will be exposed to the end user will have a higher quality face veneer, made from more visibly appealing wood species (and higher grades), which are generally more expensive. For example, because mahogany is both visibly appealing and rare, plywood with a mahogany face veneer will typically have a much higher commercial value than plywood using oak in the face veneer… For the same reasons described above with respect to face veneer species, back support species is an important driver of cost and commercial value of subject plywood.[193]

Senda Fancywood provided additional information with regard to core veneers:

> Similar to face veneer and back support species, core composition is an important determinant of cost and commercial value. Unlike face veneer species and back support species, core composition is generally more limited in terms of potential product characteristic categories. However, because the cost of different core compositions can vary significantly, incorporating core composition category into the Department's CONNUM construct is important.

These statements clearly support a finding that core and face veneers are distinct products and, therefore, should be valued using surrogate values which are specific to each input. Further, we note that when the Department placed the initial product characteristics on the record of this investigation, Mandatory Respondents provided comments identifying perceived deficiencies in the construction of the control number but did not argue that face and core veneers should be treated the same.[194] Therefore, we find that the Veneer Cost Study submitted by Mandatory Respondents does not constitute the best information on the record for valuing the face and core veneers, which are Mandatory Respondents' primary inputs.

GTA Data

[192] See Mandatory Respondents' Case Brief at 30.
[193] See Letter to the Secretary of Commerce, from Senda Fancywood, "Shanghai Senda Comments on Product Characteristics" (November 19, 2013).
[194] See Letter to the Secretary of Commerce from Mandatory Respondents "Second Comments on Product Characteristics" (December 27, 2012).

For the Preliminary Determination we used GTA data from the Philippines to value Mandatory Respondents' core and face veneer inputs. Specifically, we used HTS 4408.90.9006: "Sheets for Plywood" to value core veneer inputs, and 4408.90.1000: "Face Veneer Sheets" to value face veneer inputs.[195] Alternatively, the Bulgarian data which are available on the record for valuing face and core veneers fall under HTS 4408.90.85, which is for veneers which have a thickness greater than 1 mm, and HTS 4408.90.95, which is for veneers which have a thickness which is equal to or less than 1mm.

With regard to the Philippine GTA data for face veneers, the Department agrees with Mandatory Respondents, Dehua TB et al., and Liberty Woods et al. that the HTS category that was used for the Preliminary Determination is specific to the input used by Mandatory Respondents in that it is described as "Face Veneer Sheets." Additionally, we do not agree with Petitioners that the data they placed on the record, which they stated was from the Philippine Bureau of Import Statistics, undermines the use of the Philippine import data from Malaysia during the POI. As an initial matter, the record is unclear with respect to the source of Petitioners' data, as argued by Dehua TB et al. Additionally, Petitioners have not provided any evidence for their claim that the imports from Malaysia are unusable for our purposes. Although Petitioners argue that the Malaysian exporter is an affiliate of an interested party in our case, and therefore the data are unreliable, there is no evidence on the record that the sales made were not arm's length transactions. Specifically, even if the Department were to find the data placed on the record by Petitioners to be reliable, it does not support any of Petitioners' claims that the Philippine import data from Malaysia is unreliable.

We have examined Petitioners' claims that the Philippine import data is unreliable based on comparisons to other benchmarks on the record of this proceeding.[196] However, regarding Petitioners' suggestion to remove data for Philippine imports from Malaysia, the Department finds that Petitioners' 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. Additionally, with regard to Petitioners' 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.[197] Finally, Petitioners argue that the prices paid by Mandatory Respondents for face veneers are inconsistent with the Philippine surrogate value.[198] However, the Department finds Mandatory Respondents' NME purchase prices of inputs within the PRC are unsuitable as benchmarks because these prices are from within an NME and the presence of government controls on various aspects of NMEs renders price comparisons invalid under the Department's normal methodologies.[199] Additionally, these prices are proprietary information of the respective companies, and are not necessarily representative of industry-wide prices available to

[195] See Preliminary Factor Valuation Memorandum at Exhibit 5d.
[196] See Petitioners' Case Brief at 15.
[197] See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) ("MLWF LTFV") and accompanying Issues and Decision Memorandum at Comment 15.
[198] See Petitioners' Case Brief at 15.
[199] See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("Lined Paper LTFV").

other producers. Therefore, they do not meet the Department's preference for publicly available information.[200]

With regard to the Philippine GTA data that Mandatory Respondents argue should be used to value core veneers (i.e., HTS 4408.90.9006), the Department finds that it is not contemporaneous to the POI, and is less specific to the veneer thicknesses used by Mandatory Respondents, as discussed below. The Department agrees with Petitioners that the data under Philippine HTS 4408.90.9006 does not fulfill the Department's preference for contemporaneous. While the Department found that this was the best data available on the record for the Preliminary Determination we are considering additional data sources for the final determination as explained above.

For Bulgaria, the record contains GTA data for HTS 4408.90.85 and 4408.90.95 which we find to be contemporaneous and from a wide variety of exporting countries. Petitioners argue that the HTS category for veneers with a thickness less than 1 mm is an appropriate surrogate for the face veneers used by Mandatory Respondents, and the HTS category for veneers with a thickness greater than 1 mm is an appropriate surrogate for the core veneers used by Mandatory Respondents. Mandatory Respondents and Liberty Woods et al. argue that the thickness of a veneer is not a defining characteristic, and it is the quality of the veneer rather than the thickness that defines whether a veneer is used as a face or a core. Further, these parties argue that the Bulgarian data cannot be construed to represent face and core veneers, but rather should be treated as basket categories that contain both face and core veneers. The Department does not dispute that the quality of the veneer is an integral factor in determining whether it is suitable for use as a face veneer.[201] However, there is additional information on the record which indicates that the thickness of the veneers is important in determining whether a veneer is used as a face or core, and that veneers of widely varying quality can be used as both face and cores in the production of merchandise which meets the language of the scope. For example, in its comments regarding the appropriate product characteristics to include in the CONNUM, Senda Fancywood provided the following narrative with regard to face and back veneers:

> In correlation with the face veneer species, face veneer thickness is also an important determinant of cost and commercial value. Face veneer thickness determines the amount of a given wood needed to produce the subject plywood. Generally, the thicker the face veneer, the more expensive the product will be to produce. As a result, the cost and commercial value of plywood can change drastically with even minor changes to face veneer thickness…[202]

The Department notes, additionally, that while it is conceivable that producers of the merchandise under consideration may use veneers of thicknesses other than those defined in the Bulgarian GTA data in the production of the merchandise under consideration, the record of this

[200] See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and accompanying Issues and Decision Memorandum at Comment 5 ("{T}he fact that the … information is proprietary makes it the sort of information we normally would not use as a surrogate value.").
[201] See, e.g., Mandatory Respondents' Rebuttal Brief at 23-25.
[202] See Letter to the Secretary of Commerce, from Senda Fancywood, "Shanghai Senda Comments on Product Characteristics" (November 19, 2012).

proceeding supports a finding that these thicknesses are specific to the face and core veneers used by Mandatory Respondents.[203]

The Department finds arguments that the Bulgarian GTA data for HTS 4408.90.85 and 4408.90.95 cannot be construed to represent face and core veneers unconvincing. All parties have argued that higher quality face veneers are more expensive than lower quality core veneers.[204] The Bulgarian value on the record for HTS 4408.90.85 (e.g., veneers which have a thickness greater than 1 mm) is 213.08 Euros per cubic meter.[205] Alternatively, the Bulgarian value for HTS 4408.90.95 (e.g., veneers which have a thickness equal to or less than 1 mm) is 2,252.85 Euros per cubic meter.[206] These values seem to be in direct contrast to Mandatory Respondents' argument that the thickness of veneers is not relevant to their cost or use or value as face or core veneers, and to the argument that the thicknesses represented in the Bulgarian data are immaterial.

Finally, Mandatory Respondents argue that because there is reason to suspect or believe that Bulgaria is a recipient of forestry subsidies, that the Department should disregard Bulgaria as the primary surrogate country, or as a source for wood-related factor inputs such as financial ratios or values for face and/or core veneer. Mandatory Respondents placed on the record information regarding EU rural development programs, which they argue benefit the forestry industry such that Bulgarian values related to wood inputs are unusable as surrogate values.[207] Mandatory Respondents are correct that the Department has in the past disregarded import prices which it has reason to believe may be dumped or subsidized.[208] However, Mandatory Respondents have not demonstrated that any of the imports into Bulgaria which are used to calculate the GTA import value are dumped or subsidized. There is no evidence on the record that potential domestic forestry subsidies within Bulgaria have any effect on the imports of veneers into Bulgaria. Additionally, as discussed below, there is no evidence in the Bulgarian financial statement on the record of any subsidies which would cause the Department to find it unusable for the calculation of financial ratios.

For the above reasons, the Department finds that Bulgarian GTA data is the best data on the record to value Mandatory Respondents' face and core veneers.[209] Importantly, there is no contemporaneous Philippine GTA data available on the record that can be used to value the core veneer input used by Mandatory Respondents. Additionally, we find it reasonable, due to the

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[203] As the data with regard to Mandatory Respondents' specific veneer thicknesses is BPI, please see Sanfortune Final Analysis Memo and Jiangyang Final Analysis Memo.

[204] See, e.g., Letter to the Secretary of Commerce from Mandatory Respondents, "Surrogate Values for the Preliminary Determination" (February 22, 2013) at Exhibit 6.

[205] See Memorandum to the File from Katie Marksberry, Senior International Trade Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9 "Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Surrogate Values for the Final Determination" (September 16, 2013) ("Final Factor Valuation Memorandum") at Attachment I.

[206] See id.

[207] See Mandatory Respondents Pre-Prelim Comments at 25.

[208] See, e.g., Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation Preliminary Determination, 77 FR 60673 (Oct. 4, 2012).

[209] The CIT has upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See FMC Corp. v. United States, 27 CIT 240, 251 (CIT 2003) ("FMC Corp."),(citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992)), affirmed, 87 Fed. Appx. 753 (Fed. Cir. 2004).

specific facts of this proceeding, to determine that the Bulgarian data, which is reported on the basis of veneer thickness, is specific to the inputs being valued, in accordance with the Department's preference.[210]

Financial Ratios

Background: For the Preliminary Determination, the Department determined that the 2011 financial statements of Philippine Softwood Products, Inc. ("PSP"), and Richmond Plywood Corporation ("RPC") provided the most reliable sources for calculating surrogate financial ratios in this investigation.[211] Subsequent to the publication of the Preliminary Determination, interested parties have placed the following Philippine financial statements for the year ending 2011 on the record of this investigation: Baganga Plywood Corporation ("Baganga"), Davao Panels Enterprises, Inc. ("Davao Panels"), Mintrade Corporation ("Mintrade"), Mount Banahaw Wood Industries, Inc. ("Mount Banahaw"); and Republic Wooden Commodities Mfg. Corporation ("Republic Wooden").[212] Interested parties have also placed the following Philippine financial statements for the year ending 2012 on the record of this investigation: Mega Plywood Corporation ("Mega Plywood 2012"),[213] Novawood Forest Industries ("Novawood 2012"),[214] Republic Wooden ("Republic Wooden 2012"),[215] Winlex Marketing Corporation ("Winlex 2012"),[216] Davao Panels ("Davao Panels 2012"),[217] and Mintrade ("Mintrade 2012").[218] Petitioners have placed the following Bulgarian financial statements for the year ending 2012 on the record of this investigation: Lessoplast PLC ("Lessoplast 2012").[219]

Petitioners' Case and Rebuttal Briefs:

- The contemporaneous 2012 financial statements for the Bulgarian plywood producer Lessoplast PLC, which is more comparable to Mandatory Respondents than the other Philippine companies, represents the best available information on the record for calculating surrogate financial ratios in the final determination.
- The majority of Lessoplast's 2012 production was plantation-grown, rotary-cut poplar plywood, which is identical to merchandise produced by Mandatory Respondents.
- Lessoplast produced plywood of the same dimensions as Mandatory Respondents whereas there is no record information as to the size of the plywood produced by the Philippine companies.
- Lessoplast's production quantity is similar to Mandatory Respondents.
- The species of the face and core veneers used by Lessoplast are identical to Mandatory Respondents' whereas record evidence indicates the Philippine companies use either different species, specifically falcata and gmelina or have unspecified species.
- Export sales made up a significant portion of Lessoplast's sales revenue in 2012 while there is no evidence that the Philippine companies had any export sales.

[210] See Policy Bulletin 4.1 at 4.
[211] See Preliminary Factor Valuation Memorandum at 11-13.
[212] See Respondent Post-prelim SV Comments at Exhibits 12-16.
[213] See id. at Exhibit 17.
[214] See id. at Exhibit 18.
[215] See id. at Exhibit 19.
[216] See id. at Exhibit 20.
[217] See id. at Exhibit 21.
[218] See id. at Exhibit 22.
[219] See Letter to the Secretary of Commerce from Petitioners regarding supplement to pre-prelim comments (April 9, 2013) at Exhibit 1.

- None of the Philippine companies produced identical merchandise and some do not appear to have produced comparable merchandise based on descriptions in the financial statements.
- The Philippine companies that produce comparable merchandise either produced veneers or were engaged in upstream logging operations.
- If the Department selects the Philippines as the primary surrogate country, the products produced by RPC and PSP and their production processes are the most specific to Mandatory Respondents' products and production process.
- Precedent exists for rejecting all contemporaneous financial statements and relying on a non-contemporaneous statement if the record does not contain suitable alternatives.[220]
- There is no evidence on the record indicating that financial ratios are distorted based solely on lack of contemporaneity.
- Record evidence indicates that the surrogate companies used in the Preliminary Determination are, like Mandatory Respondents, plywood producers that do not produce veneers, while surrogate companies proposed by Mandatory Respondents produce diverse products and produce veneers.
- Information submitted by Mandatory Respondents to demonstrate that RPC and PSP are integrated is not specific to the year 2011, the year for which financial statements exist on the record.
- While Liberty Woods et al. attempts to discredit the statements of RPC and PSP based on inconsistent page numbers, these statements contain a complete set of notes and no missing information, merely sections that are repeated on the following page.
- Winlex 2012 is missing note 9, lists no physical assets or depreciation, and shows that Winlex had advances from shareholders and no reported interest expenses.
- Davao Panels 2012 lists zero factory overhead and no depreciation expenses.
- Mega Plywood 2012 shows significant non-interest bearing, unsecured advances from shareholders. Notes to the statement indicates that Mega Plywood operated a veneer plant and paid fees related to other wood products - lumber, resaw, plywood, veneer, and logs.
- Novawood 2012 continues to show "chainsaws" as a fixed asset, which the Department noted in the Preliminary Determination was an asset category used in logging and/or veneer operations in order to determine Novawood was not a producer of merchandise comparable to plywood.
- Republic Wooden reported net losses before taxes in its 2012 financial statements.
- Mintrade 2012 contain a business scope suggesting that it is only a trader of plywood, notes to the statements indicate that it has a veneer plant, but no plywood plant, and that it had an expense for a "forestry bond." Mintrade also had non-interest bearing advances from its stockholders and affiliates.

Mandatory Respondents' Case and Rebuttal Briefs:

- Vague sentences in the corporate background information of financial statements do not provide substantial evidence regarding the companies' current manufacturing operations. Rather, this relates general information about the companies at the time of founding.
- Record evidence disproves the Department's preliminary assumptions regarding the level of integration of the companies selected to provide surrogate financial ratios.
- Record evidence suggests that all Philippine producers of plywood are generally at the same level of integration and companies that the Department preliminarily concluded were manufacturing veneers were actually purchasing them.

[220] See Pure Magnesium 08-09 and accompanying Issues and Decision Memorandum at Comment 2.

- As record evidence indicates that the financial statements submitted by Mandatory Respondents were at the same level of integration as the companies used for the Preliminary Determination, the Department has no reason to continue to rely on those statements or make assumptions about the level of integration of a company based on its corporate background notes in the statements.
- For the Final Determination, the Department has numerous contemporaneous financial statements to choose from and should select Mega Plywood 2012, Winlex 2012 and Mintrade 2012.
- The financial statements of these three companies are publicly available, complete, audited, bear no evidence of countervailable subsidies and are for companies engaged in manufacturing plywood and/or highly comparable wood products.
- In MLWF from China, Petitioners argued that Philippine plywood manufacturers were reliable and representative and the Department relied on them in the final determination.[221]
- The Department's regulations specify that financial ratios will be derived from producers of identical or comparable merchandise; the Department found in its Preliminary Determination that no less than two of the submitted Philippine financial statements were for producers of comparable merchandise.[222]
- Most, if not all, Philippine plywood manufacturers are partially integrated and the three statements recommended by respondents all indicate "plywood" within the scope of their incorporation. Thus, these companies are producers of identical or highly comparable merchandise.
- Once the Department has identified the primary surrogate country, the task is not to match the industry's exact production but to find reasonably representative data.
- The 2012 Bulgarian language financial statements are not from the primary surrogate country, Petitioners have not indicated a public source for this statement, it bears no official stamps, unlike the SEC approved Philippine statements, it appears to be missing signatures, and there is "Public Document" on the top of each page in English.
- Petitioners have not met their burden to demonstrate that these financial statements are, in fact, publicly available and the Department recently disregarded financial statements because they were not publicly available in Steel Nails AR3.[223]
- Because the Department's purpose is to determine financial ratios representative of the industry, a single company's financial statements presents the danger that the statements are not representative. Particularly in this investigation, the record of which indicates there are numerous PRC producers of varying sizes.
- In contrast, Lessoplast, which is part of an international timber conglomerate, represents nearly all of Bulgarian production and is unrepresentative of the PRC plywood industry, which is made up of small, independent entities, much like the Philippine industry.
- Unlike PRC and Philippine producers, Lessoplast is dependent on imports for its veneer supply, and even more disturbing is the fact that most of Lessoplast's veneers are purchased from an affiliate in Romania. Normally, the Department would inquire as to whether these transfers took place at arms-length but lacks the data for this analysis.
- The Department verified that Mandatory Respondents' veneer suppliers were in close proximity and did not incur the cost of importing these primary inputs.

[221] See MLWF LTFV.
[222] See Preliminary Decision Memo at 11.
[223] See Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 18, 2013) ("Steel Nails AR3") and accompanying Issues and Decision Memorandum at Comment 1.

- The Philippines is more comparable to market conditions in the PRC than is Bulgaria because there are numerous veneer plants located domestically throughout the Philippines, as in the PRC, whereas Lessoplast is dependent on veneer imports.
- Record evidence suggests that Lessoplast is a fully integrated mill; its website shows raw lumber, tree trunks and veneering machines and states that the company started a sawmill with its plywood mill.
- Lessoplast is no more comparable than the many Philippine companies that purchase at least some of their veneer requirements and the record does not demonstrate that Lessoplast is a closer match to Mandatory Respondents' production process than the Philippine companies.
- While Petitioners criticize the Philippine statements for diversified production, the Lessoplast website also indicates a diversified production line of various board materials, elements for shuttering and a variety of timber.
- Although Petitioners assert that the primary inputs used in the Philippines are of a different species than those used by Mandatory Respondents, the record demonstrates that Mandatory Respondents used species other than solely poplar.
- The exact species of hardwood, which are all highly comparable, is less significant than the fact that there are numerous veneer producers and plywood manufacturers. This is the case in the Philippines but not in Bulgaria, where a single monopoly sawmill that appears fully integrated produces a fraction of the plywood produced in the Philippines or the PRC.
- Petitioners assertion that there is no evidence that Philippine plywood manufacturers purchase veneers is contradicted by import data submitted by Petitioners showing that at least six Philippine companies for which the record contains financial statements, including the three companies recommended by respondents, purchased veneers.

Liberty Woods et al.'s Case and Rebuttal Briefs:

- The Department should use contemporaneous 2012 Philippine financial statements for the final determination, of which seven have been placed on the record since the Preliminary Determination.
- The financial statements used for the Preliminary Determination are not contemporaneous and are unreliable because of inconsistencies (e.g., unnumbered pages, repeated portions of pages, repeated page numbers, truncated sentences) that would require the Department to speculate as to whether the statements are complete and accurate.
- Lessoplast is the manufacturing arm of a multinational group that imports raw materials from affiliates and exports finished products to affiliates; in 2012, Lessoplast purchased 43 percent of its raw materials from affiliates and earned 88 percent of its revenues from sales to affiliates.
- Lessoplast operates a retail store outside the factory, which infects its financial ratios with costs not incurred by respondents; there is also no record evidence suggesting that four of the Philippine companies operate a retail store.
- There is ample precedent for avoiding the use of a surrogate country with no usable financial statement.
- While Petitioners have examined closely the business scope listed in each Philippine financial statement, the business scope listed on the licenses of Mandatory Respondents demonstrates that business activities can be broadly defined.
- Only half of Lessoplast's production is plywood, while the other half is hardboard, which is not the merchandise under consideration and not produced by respondents.

- While descriptions of the Philippine companies may be broad, there are no explicit details confirming that half of the companies' production does not meet the scope of the investigation, as is the case with Lessoplast.
- The business license scopes, or other record evidence, for Mega Plywood, Davao Panels, Republic, and Mintrade confirm that these companies produce and sell plywood and other wood products.
- Petitioners fail to explain why a purported lack of information regarding export sales of the Philippine companies is relevant to the calculation of surrogate financial ratios, which have nothing to do with whether the companies had export sales. Regardless, record evidence suggests that at least Mintrade exported wood products.
- There are multiple contemporaneous financial statements on the record for Philippine producers, providing a broad market average of cost, while there is only one for a Bulgarian producer with little activity outside of its group of affiliates and retail stores.
- While Petitioners assert that Lessoplast is the best fit because it makes "plantation grown poplar plywood" while Philippine companies produce using a variety of inputs, information submitted by Petitioners demonstrates that only half of Lessoplast's production is of plywood.
- Petitioners' argument that Lessoplast produces plywood more specific to those produced by Mandatory Respondents overlooks record evidence that Lessoplast produces standard sizes but also custom sizes. Moreover, the scope is not restricted by size.
- Petitioners' argument that Lessoplast's face and core veneer species is more specific than those used by Philippine companies overlooks the fact that Lessoplast's website indicates that it uses more than just poplar cores and the fact that Mandatory Respondents used more varieties than just birch face veneer.
- Although Petitioners argue that Lessoplast purchased veneers while it is unclear whether the Philippine companies purchased or produced veneers, Lessoplast merely outsourced its veneer production to sister companies. While some Philippine financial statements indicate that the companies produced veneers, other statements, such as Davao Panels, make no mention of veneers, leading to the conclusion that they purchase veneers.
- Petitioners' argument that the size of Lessoplast is more comparable to Mandatory Respondents than the Philippine producers does not address why the size of a company has any relation to the relative ratios and the Department, and the Courts, has rejected this argument on numerous occasions.[224]
- The surrogate companies in both Bulgaria and the Philippines produce plywood within the scope of this investigation, i.e., identical merchandise.

Dehua TB et al.'s Case and Rebuttal Briefs:

- Information placed on the record after the Preliminary Determination indicates that one of the companies whose financial statements were used for the Preliminary Determination was actually a vertically integrated producer and that the other company is actually a trading company.
- Documentation submitted by Petitioners from the internet and from the Philippine Wood Producers Association does not demonstrate that the companies used in the Preliminary Determination are producers of plywood (and plywood alone) because that documentation did not include all page numbers and should be considered incomplete.

[224] See, e.g., Dorbest, 604 F.3d 1363, 1373-75 (Fed. Cir. 2009); Steel Nails AR2 and accompanying Issues and Decision Memorandum at Comment 2.

- Documentation submitted by Petitioners does not indicate the level of integration of the companies used in the Preliminary Determination and the Department must reject those statements in favor of better and more contemporaneous financial statements now on the record.
- The Department should use the financial statements of Mega Plywood, Winlex and Mintrade for the final determination.
- Although Mandatory Respondents are not integrated producers, record information indicates that other producers in the PRC are and, as such, these statements are representative of producers in the NME.
- The Department did not explain how it preliminarily concluded that the 2011 statements of Mega Plywood and Winlex demonstrated that these companies are integrated.
- The mere reference to the production, manufacture, sale or otherwise dealing in plywood and veneer in financial statements does not confirm level of integration as even non-integrated producers "deal" or "buy" veneer.
- Record evidence demonstrates that Lessoplast is an integrated producer because it sourced its veneers from its affiliates. Lessoplast's Director's Report states that it was able to increase production of its main items in 2012 because of the supply of logs and veneer needed for production but its financial statements do not indicate anywhere how it uses logs in production.
- The Philippine financial statements represent the best information available given the Department's preference for using multiple financial statements.
- Lessoplast's main business also includes significant production of fiberboard and ancillary production of bottoms of crates and lumber, all of which constitute non-subject merchandise and make Lessoplast's financial ratio information unreliable.

Department's Position: When selecting financial statements for purposes of calculating surrogate financial ratios, the Department's policy is to use data from one or more market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[225] 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 accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.[226] In determining the suitability of surrogate values, the Department considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each source on a case-by-case basis.[227] Accordingly, when examining the merits of financial statements on the record, the Department does not have an established hierarchy that automatically gives certain

[225] See 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) ("Diamond Sawblades LTFV") and accompanying Issues and Decision Memorandum at Comment 1.
[226] See Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 1.
[227] See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1;see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

characteristics more weight than others. Rather, the Department must weigh available information with respect to each situation and make a product and case-specific decision as to what constitutes the "best" available information. Furthermore, the CIT has recognized the Department's discretion in selecting the best surrogate values on the record.[228]

While the Department does not have an established hierarchy to determine the most appropriate source for calculating surrogate financial ratios, the Department has a clear preference for and well-established practice of calculating surrogate financial ratios based on financial statements that are contemporaneous with the POI, or period of review, provided that otherwise usable and contemporaneous financial statements are extant on the record.[229] As we have determined that the record contains financial statements suitable for calculation of surrogate financial ratios that are contemporaneous with the POI, as explained below, we do not find it necessary to revisit our analysis of the financial statements reviewed for purposes of our Preliminary Determination, none of which were contemporaneous with the POI, or consider any financial statements submitted after the Preliminary Determination for the year-ending 2011. Accordingly, as we are not considering any of these financial statements for the final determination on the basis of their being not contemporaneous, we need not address the issues concerning the level of integration or completeness of the financial statements for PSP and RPC.

After having removed non-contemporaneous financial statement from further consideration, the record contains contemporaneous financial statements for seven companies located in the Philippines and contemporaneous financial statements for one company located in Bulgaria. As a prefatory matter, we note that all of the 2012 financial statements indicate that the companies produced plywood in the corporate information statement note to the financial statements or elsewhere in their statements.[230] Thus we consider all of these companies to be producers of comparable merchandise. While Petitioners have argued at length over the product mix of certain of the Philippine companies, the Department must use the best available information available to it at the time the determination must be made. In instances where the financial statements specifically break out the volumes of comparable merchandise versus other merchandise, the Department has been able to make a comparison between financial statements to determine which company most closely resembles the industry or companies being

[228] The CIT has upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See FMC Corp., 27 CIT 240, 251 (CIT 2003),(citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992)), affirmed, 87 Fed. Appx. 753 (Fed. Cir. 2004).

[229] See, e.g., Certain Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009) and accompanying Issues and Decision Memorandum at Comment 13; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews, 74 FR 29473 (June 22, 2009) and accompanying Issues and Decision Memorandum at Comment 1A; Chlorinated Isocyanurates From the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review, 74 FR 68575 (December 28, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

[230] See Novawood 2012 at Note 1 ("…business of manufacturing goods such as wood & wood products, but not limited to plywood…"); Davao 2012 at Note 1 ("…business of manufacturing…all kinds of plywood panels…"; Republic 2012 at Note 1 ("…business of manufacturing…all kinds of wooden products such as fancy plywood…"; Mega 2012 at Note 1 ("…engage in the production, manufacture, sale or otherwise dealing in plywood, veneer…") and "Property, Plant and Equipment" lists veneer and plywood plant; Winlex 2012 at Note 1 ("…engage primarily to manufacture…veneer sheets, plywood…"); Mintrade 2012 at Note 17 (paid taxes for "Producer of lumber & plywood"); Lessoplast 2012 (Director's Report at "Production Business").

examined.[231] However, financial statements frequently do not contain this level of detail, rendering this analysis impossible. Thus, we have not generally based our decisions on such an analysis in the past. Therefore, although certain of the Philippine companies may produce or trade in products other than comparable merchandise, we are unable to undertake a comparative analysis of the companies' production due to lack of specific record information for all of the Philippine companies. Accordingly, we find the fact that these companies produced comparable merchandise sufficient to warrant further examination for use in this final determination.

In this investigation, we determined that an integrated producer begins its production with logs and produces veneers, which are peeled or cut from logs into sheets.[232] In our Preliminary Determination, we sought where possible to select financial statements for producers of merchandise under consideration that matched the non-integrated production experience of the mandatory respondents.[233] Despite arguments from Mandatory Respondents that plywood is a relatively simple product and, as such, most plywood producers should be highly comparable to Mandatory Respondents in terms of inputs and manufacturing processes,[234] we continue to find that the level of integration of a company, or companies, from which surrogate financial ratios are derived is relevant to determining the most appropriate surrogate values by which to value Mandatory Respondents' FOPs.[235] The Department's standard criteria for selecting financial statements in calculating surrogate financial ratios includes examining the level of integration of the surrogate company in order to approximate the overhead costs, SG&A, and profit levels of the respondent.[236] Further, the Department has an established practice of rejecting financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available.[237] 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.[238] Thus, as in the Preliminary Determination, we have examined the usable financial statements on the record to determine which companies have a production experience that is at a level most similar to the Mandatory Respondents.

The financial statements for each of these companies are discussed below:

Novawood: In the Preliminary Determination we determined that Novawood was an integrated producer of plywood and noted that its 2011 financial statements had distinct categories of

[231] See Steel Nails AR2 and accompanying Issues and Decision Memorandum at Comment 2 ("{W}here such detailed evidence is available in the record of the proceeding, we will analyze a surrogate company's product mix to make a determination of whether it is more reasonable to consider the company an "identical" producer as a whole or more reasonable to consider the company a producer of comparable merchandise depending on the facts of each case.").
[232] See Preliminary Factor Valuation Memorandum at 12; see also PRC Plywood Petition at 8.
[233] See Preliminary Factor Valuation Memorandum at 12.
[234] See Mandatory Respondents' Case Brief at 59.
[235] See Preliminary Factor Valuation Memorandum at 11-12.
[236] See, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010); Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 76 FR 1966 (January 11, 2011) and accompanying Issues and Decision Memorandum at Comment 5.
[237] See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183, 22193 (May 3, 2001); Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.
[238] See MLWF LTFV and accompanying Issues and Decision Memorandum at Comment 1A.

equipment that are used in logging operations and the Department had more focused on plywood information available on the record to value factory overhead, SG&A, and profit.[239] As Novawood's 2012 financial statement contains the same equipment listed as assets, we find no basis to depart from our analysis in the Preliminary Determination.[240] We further note that no interested party has challenged our Preliminary Determination in this regard and one party explicitly stated that it was not recommending Novawood for other reasons.[241] Thus, we are not considering the 2012 financial statements of Novawood for use in calculating surrogate financial ratios for this final determination.

Republic Wooden: Republic Wooden's 2012 financial statements indicate that the company had a net loss before taxes of 204,015 Philippine Pesos.[242] We will use the financial statements of companies that have earned a profit and disregard the financial statements of companies that have zero profit when there are other financial statements that have earned positive profit on the record.[243] Accordingly, as there are several financial statements for companies that were profitable during the period corresponding with the POI, we are not considering the 2012 financial statements of Republic Wooden for use in calculating surrogate financial ratios for this final determination.

Davao Panels: While Petitioners have raised legitimate concerns regarding calculating surrogate financial ratios based on financial statements that list zero factory overhead, the financial statement of Davao Panels also suffers a fatal flaw akin to the inconsistencies argued by Liberty Wood et al. with regard to the 2011 financial statements of PSP and RPC.[244] Specifically, Davao Panels' 2012 financial statements are missing note 10.[245] As we have stated on numerous occasions, the Department prefers financial statements to be complete, free of evidence of receipt of countervailable subsidies, and contemporaneous.[246] Therefore, as there are other financial statements that are complete, we are not considering the 2012 financial statements of Davao Panels for use in calculating surrogate financial ratios for this final determination.

Winlex: Notwithstanding issues raised by Petitioners[247] with regard to the absence of any physical assets or depreciation in the 2012 financial statements of Winlex,[248] we note that the financial statements are also missing Note 9.[249] As noted above, the Department prefers

[239] See Preliminary Factor Valuation Memorandum at 12.
[240] See Novawood 2012 at "Schedules of Property, Plant and Equipment."
[241] See Letter to the Secretary of Commerce from Liberty Woods et al. "Rebuttal Brief for Consideration Prior to the Final Determination" (July 15, 2013) ("Liberty Woods et al. Rebuttal Brief") at 14 n5.
[242] See Republic Wooden 2012 at "Statements of Income."
[243] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2B.
[244] See Letter to the Secretary of Commerce from Liberty Woods et al. "Case Brief for Consideration Prior to the Final Determination" (July 8, 2013) at 37-39.
[245] See Davao Panels 2012 at Note 9, followed by Note 11.
[246] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838(April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011) ("PET Film") and accompanying Issues and Decision Memorandum at Issue 1.
[247] See Letter to the Secretary of Commerce from Petitioners regarding rebuttal brief (July 16, 2013) ("Petitioners' Rebuttal Brief") at 22.
[248] See Winlex 2012 at Balance Sheets and Note 16.
[249] See Winlex 2012 at Note 8, followed by a conspicuous gap and Note 10 on the next page.

financial statements that are complete, which does not appear to be the case with the Winlex 2012 financial statements. Therefore, as there other financial statements that appear to be complete, we are not considering the 2012 financial statements of Winlex for use in calculating surrogate financial ratios for this final determination.

Mega Plywood: As noted by Petitioners, Note 8 of Mega Plywood 2012 shows that the company maintains a veneer and plywood plant and Note 20 indicates that the company paid fees for operations related to lumber, resaw, plywood/veneer and logs.[250] Thus, the Department determines that record evidence demonstrating that Mega Plywood is an integrated producer exceeds a mere reference to the manufacture or sale of veneers in the corporate information notes to the financial statements. Accordingly, we find that the production experience of Mega Plywood is a less suitable match to the production experience of Mandatory Respondents and, thus, we are not considering the 2012 financial statements of Mega Plywood for use in calculating surrogate financial ratios for this final determination.

Mintrade: While Petitioners argue that Mintrade is not even a producer of plywood,[251] we do not agree that the record is definitive in this respect. Indeed, Mintrade's financial statements indicate that it paid licensing fees as a "Producer of lumber & plywood."[252] Thus, we cannot determine that Mintrade is not, in fact, a producer of plywood. However, as noted by Petitioners,[253] Note 6 of Mintrade's financial statements indicate that Mintrade operated "Veneer Plants" and Note 13 lists a "Forestry bond" as an operating expense.[254] Thus, the Department determines that record evidence demonstrating that Mintrade is an integrated producer exceeds a mere reference to the manufacture or sale of veneers in the corporate information notes to the financial statements. Accordingly, we find that the production experience of Mintrade does not match the production experience of Mandatory Respondents and, thus, we are not considering the 2012 financial statements of Mintrade for use in calculating surrogate financial ratios for this final determination.

Notwithstanding our reservations noted above, Petitioners have argued that the financial statements of Mega Plywood, Winlex, and Mintrade all demonstrate that the companies received non-interest bearing advances from their shareholders, or that they had advances from shareholders with no recorded interest expense, and has claimed that it is the Department's practice to apply an interest expense using a market based rate, which does not exist on this record for the Philippines.[255] Petitioners are correct that in a market economy context, the Department's practice is to make adjustments to financial statements where there is evidence that the company received interest-free loans.[256] However, in an NME context it is the Department's long-standing practice to not make adjustments to the financial statements, as doing so may

[250] See Mega Plywood 2012 at Note 20.
[251] See Petitioners' Rebuttal Brief at 26-27.
[252] See Mintrade 2012 at Note 17.
[253] See Petitioners' Rebuttal Brief at 26-27.
[254] See Mintrade 2012 at Note 6 and Note 13.
[255] See Petitioners' Rebuttal Brief at 22-27.
[256] See Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy and Determination to Revoke in Part, 70 FR 71464 (November 29, 2005) and accompanying Issues and Decision Memorandum at Comment 10 ("Because Pagani did not incur actual interest expenses on this loan from its parent company, we find that it is appropriate to calculate an imputed interest expense."); Stainless Steel Bar From India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 52294 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 7 ("The Department's practice is to add interest expenses where the respondent has received interest-free loans.").

introduce unintended distortions into the data rather than achieving greater accuracy.[257] While we may place interest expenses itemized in a company's financial statements in different categories based on the long- or short-term nature of the loans, here, the companies have not reported any interest expenses.[258] In this instance, because the companies explicitly stated that they received interest-free loans or did not claim any interest expense, which would not reflect the amount usually incurred for a market-based loan, we cannot be certain what distortions this distinction would introduce into the resultant financial ratios calculated using these financial statements. Accordingly, in addition to record evidence detailed above indicating that the three companies expressly recommended by Mandatory Respondents,[259] Mega Plywood, Winlex, and Mintrade are integrated companies, unlike Mandatory Respondents, we determine that these financial statements are otherwise unusable based on details regarding loans received from shareholders.

Lessoplast: With respect to Petitioners argument that Lessoplast is a closer match than the Philippine companies in terms of production to Mandatory Respondents, we have stated in other proceedings that we find size alone is not a dispositive factor.[260] The Department has long found that disparate production volume alone does not render unreasonable the data from a surrogate producer.[261] Additionally, the CAFC and the CIT have upheld the Department's use of smaller companies because "excluding smaller companies based on distortions in economies of scale would also necessitate excluding the larger companies based on economies of scale, thereby impermissibly excluding all data from all surrogate companies."[262]

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[257] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 15; Final Determination of Sales at Less than Fair Value: Coated Freesheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 4; Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Administrative and New Shipper Reviews, 72 FR 52049 and accompanying Issues and Decision Memorandum at Comment 2 (stating that because the Department cannot adjust the line items of the financial statements of any given surrogate company, we must accept the information from the financial statement on an "as-is" basis in calculating the financial ratios); Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (September 27, 2001 and accompanying Issues and Decision Memorandum at Comment 4 ("{I}n calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.").

[258] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 9 ("{T}he Department will reduce interest expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature.").

[259] See Mandatory Respondents' Case Brief at 63.

[260] See Certain Steel Nails From the People's Republic of China: Final Results of the First Administrative Review, 76 FR 16379 (March 23, 2011) and accompanying Issues and Decision Memorandum at Comment 3.

[261] See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003) and accompanying Issues and Decision Memorandum at Comment 1 ("Simply because the production process of the surrogate producer results in smaller production volumes does not render it unfit as a surrogate."); see also Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 4 ("Regarding the petitioner's arguments about capacity, we do not believe that size or capacity of the surrogate producer always poses a necessary consideration.").

[262] See Lifestyle Enter. v. United States, 768 F. Supp. 2d 1286, 1306 (Ct. Int'l Trade 2011) (citing Dorbest, 604 F.3d 1363, 1374 (Fed. Cir. 2010)).

Similarly, Petitioners' argument that Lessoplast's production of plantation-grown, rotary-cut, poplar plywood, in standard plywood dimensions is more specific to Mandatory Respondents' production than the Philippine producers[263] is unpersuasive on several counts. As noted by Liberty Woods et al. Lessoplast's website states that it can produce plywood to various sizes and using various wood species, and Mandatory Respondents produced plywood using various wood species for their face veneers.[264] More importantly, though, Petitioners have not placed any information on the record of this investigation demonstrating that such a distinction would have any effect on the cost structure of a surrogate financial company and, thus, be a more specific match to Mandatory Respondents' production costs. Petitioners argue that it is the Department's practice to use financial statements from companies that produce identical merchandise over companies that produce comparable merchandise and that none of the six Philippine companies produced identical merchandise.[265] However, the Department is unable to determine based on the record evidence what percentage of the potential surrogate companies' production is comprised of "identical merchandise." The scope of this investigation covers an extremely broad range of merchandise, and all merchandise falling within that scope is identical merchandise unless it is graded for structural uses or falls under another exclusion, none of which can be determined on the basis of these financial statements alone.[266] Thus, we consider all potential surrogate companies discussed herein to be producers of "comparable merchandise" as we cannot make the determination that their production is "identical" based on the information contained in the financial statements.

The Department has analyzed surrogate values based on whether a match is more specific depending on the species in question, but that analysis has taken into account record evidence that demonstrated the costs associated with production of one species or another is relevant.[267] Here, we cannot say that the cost of producing plywood using species such as falcata and gmelina is appreciably different than the cost of producing plywood using poplar. The same reasoning holds true for the size of plywood produced. Nevertheless, while Petitioners note that there is no record evidence that the Philippine companies produced plywood to the same sizes produced by Lessoplast, there is, conversely no evidence that they do not. To the contrary, Petitioners state that Lessoplast produced plywood to "standard dimensions,"[268] leading to the conclusion that the Philippine companies also produced plywood to the same dimensions, hence the phrase "standard." Thus, we do not find Petitioners' arguments that Lessoplast is a better match to Mandatory Respondents than the Philippine companies in terms of production alone warrant selection of Lessoplast's 2012 financial statements for use in calculating surrogate financial ratios in this investigation.

While Liberty Woods et al. argue that Lessoplast's financial statements should be disqualified based on the fact that it operates a retail store and its financial ratios are infected with costs not

[263] See Petitioners' Case Brief at 18-20.
[264] See Liberty Woods et al. Rebuttal Brief at18-20.
[265] See Petitioners' Case Brief at 18.
[266] See Comment 6 above.
[267] See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012) and accompanying Issues and Decision Memorandum at Comment 10 ("Additionally, Domestic Processors' claim that the Thai SV for shrimp feed is more specific to the feed input based on the dominance of white shrimp (the only shrimp produced by the respondents) production in Thailand, ignores record evidence that feed for white shrimp should be lower priced than feed for other species, such as black tiger shrimp.").
[268] See Petitioners' Case Brief at 19.

incurred by Mandatory Respondents,[269] the legal precedent cited for this notion is specific to "significant retail operations."[270] The only evidence of Lessoplast's "retail operations" that exist on the record of this investigation is from the Lessoplast website which states that "{t}he production Lessoplast is sold in bulk either directly from the company premises, or from the store situated in the town of Plovdiv."[271] Thus, we disagree with Liberty Woods et al.'s argument on two counts. First, this statement does not provide definitive support for the claim that the "store," which appears nowhere in Lessoplast's financial statements, is actually affiliated with Lessoplast. Second, this statement alone does not provide the necessary detail to determine whether the "store" constitutes a "significant retail operation." Indeed, the fact that production of Lessoplast is sold in bulk from this "store" suggests that this store is a sales office for bulk sales to intermediate consumers rather than for "retail" sales of small quantities of plywood to end users. Regardless, the record does not confirm that Lessoplast's financial ratios would be affected by this operation.

Liberty Woods et al. has argued that Lessoplast's cost structure is not representative of a broad market average due to its purchases of raw materials and sales of finished goods to affiliated parties and because of its dominance of the Bulgarian plywood industry.[272] Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if they do not fairly reflect the amount usually reflected in the market under consideration. We note that while Liberty Woods et al. argue that Lessoplast's purchases from and sales to its affiliates are not arms-length transactions, it has not argued that the prices paid by Lessoplast for its raw materials and the revenues earned from its sales to its affiliates are not market-based prices. Indeed, the company was profitable in the year encompassing the POI[273] and, absent any evidence to the contrary, we find that the record does not support the conclusion that affiliated party transactions reflected in Lessoplast's financial statements render the statements unusable.

In consideration of the foregoing, and as was the case in the Preliminary Determination,[274] we find level of integration to be a significant factor in determining the most appropriate financial statements by which to value surrogate financial ratios in this investigation. As noted above, in this investigation, we determined that an integrated producer peels or cuts logs into veneers and that the mandatory respondents employ a non-integrated production process, meaning that they purchase veneers for production of plywood.[275] As explained above, the financial statements of all Philippine producers of comparable merchandise that exist on the record of this investigation are either for integrated producers, or are otherwise unusable. Dehua TB et al. argue that Lessoplast is a vertically integrated company and points to Petitioners' statement that Lessoplast sourced much of its veneer sheets from an affiliated party, pictures of logs on its website and statements that Lessoplast has investments in mills in Romania and Serbia for production of veneers.[276] Mandatory Respondents have also argued that Lessoplast is integrated, pointing to

[269] See Liberty Woods et al. Rebuttal Brief at 14-15.
[270] See id. at 14-15 (citing Home Meridian Int'l Inc. v. United States, 865 F. Supp. 2d 1311, 1325-26 (CIT 2012) and Dongguan Sunrise Furniture Co., Ltd. v. United States, 904 F. Supp. 2d 1359 (CIT 2013)).
[271] See Letter to the Secretary of Commerce from Petitioners regarding rebuttal surrogate value comments (March 13, 2013) ("Petitioners Rebuttal Surrogate Value Data") at Exhibit 8, "About us."
[272] See Liberty Woods et al. Rebuttal Brief at 12-13.
[273] See Lessoplast 2012 at Income Statement.
[274] See Preliminary Factor Valuation Memorandum at 11-13.
[275] See Preliminary Factor Valuation Memorandum at 12; See also PRC Plywood Petition at 8.
[276] See Letter to the Secretary of Commerce from Dehua TB et al. "Rebuttal Case Brief" (July 15, 2013) ("Dehua TB et al. Rebuttal Brief") at 7-8.

web information indicating that the company started up a sawmill and images on Lessoplast's website of logs, raw lumber and veneering machines.[277]

Dehua TB et al.'s contention that Lessoplast's investment in veneer operations in Romania and Serbia indicate that Lessoplast produces veneers is misplaced. As noted by Mandatory Respondents, Lessoplast has to "rely heavily on imported veneers from Serbia or Romania,"[278] and, as noted by Liberty Woods et al. "Lessoplast is a part of an integrated conglomerate that has sliced up production operations among affiliates."[279] We note that nowhere in Lessoplast's financial statements is it indicated that these are consolidated statements of all of its affiliates. Indeed, Liberty Woods et al. provided a very detailed analysis of Lessoplast's purchases from and sales to its affiliates[280] based on information contained in the financial statements because that activity is clearly broken out and separate from Lessoplast's own activities. Thus, we find that Lessoplast's investments in veneer plants in Serbia and Romania refers to its investments in those affiliated companies rather than manufacturing divisions within Lessoplast. Further, we do not find the fact that Lessoplast owns veneer plants in other countries, which presumably have their own financial statements, sufficient to determine that Lessoplast is an integrated producer.

While Lessoplast's website does depict images of logs and machinery handling logs, there is no indication on the record that it produces its own veneers. The Director's Report appended to Lessoplast's financial statements states that the two main activities of the company are plywood and wood-fiber-plates ("WPF"), but that it also produces "Bottoms of crates" and "Beechen and poplar details."[281] The report also details Lessoplast's sales activity in 2012 and lists Plywood, WPF, bottoms of crates, and lumber.[282] Thus, we cannot say that the images of lumber yards, logs and log-handling machinery are not related to production of WPF, lumber, bottoms of crates, beechen and poplar details. Indeed, the record does not contain any information as to the production processes of any of these products. Similarly, we cannot say that the reference on Lessoplast's website to a sawmill that was started up in 1935 together with the plywood mill[283] is not related to these products, or if the sawmill is still in operation. The same reasoning applies to the image of a machine handling logs, which we cannot conclude is part of a veneer operation or related to these ancillary products. While Dehua TB et al. argue that Lessoplast is an integrated producer because the Director's Report states that "{i}n 2012 an increased production of both main items reported compared to 2011. This is due to the rhythmic supply of logs and veneer needed for this production,"[284] we do not find that this supports the claim that Lessoplast produces its own veneers. Lessoplast clearly purchases veneers from affiliated producers and it is not clear how logs may or may not be used in the production of WFP, Lessoplast's other "main item." Thus, we determine that Lessoplast is not an integrated producer of plywood within the meaning of the term defined in the Preliminary Determination. Specifically, we stated that an integrated producer begins its production with logs and produces veneers, which are peeled or cut from logs into sheets.[285]

[277] See Mandatory Respondents' Rebuttal Brief at 20-21.
[278] See Mandatory Respondents' Rebuttal Brief at 22.
[279] See Liberty Woods et al. Rebuttal Brief at 20.
[280] See Liberty Woods et al. Rebuttal Brief at 12-13.
[281] See Lessoplast 2012 at "Production business."
[282] See Lessoplast 2012, Director's Report at "Trade Activity."
[283] See Petitioners Rebuttal Surrogate Value Data at "Historical dates."
[284] See Dehua TB et al. Rebuttal Brief at 7-8.
[285] See Preliminary Factor Valuation Memorandum at 12.

Mandatory Respondents argue that the Lessoplast financial statements have serious defects in that the pdf of the Bulgarian-language financial statements have the English words "PUBLIC DOCUMENT" in the header and it appears to be missing a signature on page 4, and because Petitioners have never indicated a public source for this data.[286] With regard to the "Public Document" header on the Bulgarian-language financial statement, we note that every page contained in the exhibits attached to the submission in question is stamped with the very same header.[287] Thus, the Public Document header appears to have been placed there by Petitioners and does not even approach the "highly suspicious" characterization of Respondents.[288] With respect to the signature block on page four of the financial statements that does not contain a signature, we note that there are, in fact, four locations in the financial statements that contain blank signature blocks, each accompanying statements to the effect that the annotations are an integral part of the financial statements.[289] While we cannot speculate as to why these signature blocks were left blank, we note that the annotations appear to be complete and comprehensive. We further note that the Bulgarian-language financial statements contain an auditor's signature and the Director's Report appended to the financial statements includes what appears to be the signature of the CEO on every page,[290] including on the last page, which is the only signature block in the entire document that specifies below the signature block "Signature and stamp."[291]

In support of the argument that Petitioners have not met the burden to establish that Lessoplast's financial statements are publicly available, respondents point to Steel Nails AR3, and claim that the Department in that proceeding rejected Ukraine as the surrogate country because the submitter of the sole Ukrainian financial statement did not affirmatively establish its public availability.[292] However, in that proceeding the Department rejected the sole Ukrainian financial statements because Petitioners in that segment approached the company and found that "company officials forbade the use of the financial statements."[293] In other words, interested parties made their case in Steel Nails AR3 by conducting independent research and proactively gathering information to prove their assertions, which allowed the Department to make an informed and reasoned decision. Interested parties in this proceeding have not reliably demonstrated or provided any indication that Lessoplast's 2012 financial statements are not intended for public use.

The Department recognizes that Lessoplast is not exclusively a plywood producer. If there were usable Philippine financial statements that contained itemized accounts for different production lines, it would be possible to make a comparison on the basis of which company's business was comprised of more plywood, and which companies' production was most similar to Mandatory Respondents' production experience, but the record does not contain such information. Nor does the record contain any usable statements of Philippine producers that are definitively non-integrated, as explained above. However, Lessoplast's financial statements are clear in stating

[286] See Mandatory Respondents' Rebuttal Brief at 18-19.
[287] See Letter from Petitioner to the Secretary of Commerce regarding comments prior to the Preliminary Determination (April 3, 2013) ("Petitioners Pre-Prelim Comments") at 21-124.
[288] See Mandatory Respondents' Rebuttal Brief at 18.
[289] See Lessoplast 2012 at 1-4 (e.g., signature block accompanying the following statement on page 1: "The statement for the comprehensive income must be considered together with the annotations which are an integral part of the financial statement.").
[290] See Petitioners Pre-Prelim Comments at Exhibit 1.
[291] See Lessoplast 2012 at Director's Report.
[292] See Steel Nails AR3, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment 1D.
[293] See id.

that the two main structural activities of the company are plywood and WFP.[294] While Lessoplast's production is not exclusively plywood, we find it to be a significant producer of comparable merchandise because it produced 39,748 cubic meters of plywood in 2012, which was more than half of its total production[295] and which no party has argued is not a significant number. We further find that there is no evidence sufficient to definitively conclude that Lessoplast produces its own veneers.

We recognize that interested parties have argued that financial ratios from one surrogate company may not constitute a broad market average. However, because the record does not contain otherwise usable financial statements for companies in the Philippines, the Lessoplast 2012 financial statements represent the best available information for calculating surrogate financial ratios for this final determination. Lessoplast's 2012 financial statements represent data for a non-integrated and significant producer of comparable merchandise subject to this investigation, and financial statements that are contemporaneous with the POI, free of countervailable subsidies, complete, and, absent any indication to the contrary, publicly available. Thus, the record contains a viable option from Bulgaria for calculating surrogate financial ratios in this investigation, while the record does not contain any suitable options from the Philippines.

As noted above, the core and face veneer inputs and the surrogate financial ratios account for the vast majority of NV and thus are by far the predominant factors in selecting a surrogate country. In due consideration of the totality of information placed on the record of this investigation, the Department finds that the surrogate values for face and core veneers from Bulgaria, and the financial statement for a Bulgarian company, represent the best available information for the valuation of respondents' FOPs. Therefore, we find that the reliability and specificity of the data considerations detailed above support our selection of Bulgaria as the primary surrogate country for this final determination.

Other Minor Inputs

Liberty Woods et al.'s Rebuttal Brief:

- There are six inputs for which the Bulgarian import data is less specific to the data available from the Philippines or entirely not available: medium-density fiberboard ("MDF"), methacrylic acid, wheat flour, titanium dioxide, EPE, and quartz sand.

Department's Position: Above we examined the available data on the record with respect to the primary inputs for the merchandise under consideration, core and face veneers, and the financial ratios. Liberty Woods et al. argued that in addition to the main inputs, there are additional inputs that are not as specific or available in Bulgaria as in the Philippines. Here we address the remaining allegations regarding the suitability of the Bulgarian data.

MDF: Liberty Woods et al. argue that for the Preliminary Determination the Department valued the MDF used by Mandatory Respondents using HTS 4411.21, and there are no Bulgarian imports under the same HTS category for the POI, and that the HTS category recommended by Petitioners (HTS 4411.12) "does not match the six-digit HTS used by the Department."[296]

[294] See Lessoplast 2012, Director's Report at "Production Business."
[295] See id.
[296] See Liberty Woods et al. Rebuttal Brief at 23-24.

However, we have POI-specific data on the record from Bulgaria for HTS 4412.12.10, which is described as "Medium Density Fibreboard Mdf Of Wood, Of A Thickness <= 5 mm."[297] We find that this is specific to the input used by Mandatory Respondents and otherwise fulfills the Departments criteria for surrogate value data. Therefore, we find that the Bulgarian data is specific to the input used by Mandatory Respondents and otherwise fulfills the Department's criteria for surrogate value data.

Methacrylic Acid: Liberty Woods et al. argue that for the Preliminary Determination the Department valued the methacrylic acid used by Mandatory Respondents using HTS 2916.130.0000, and there are no Bulgarian imports under the same HTS category for the POI. In reviewing the Bulgarian data on the record of this proceeding, we find that there is POI-specific data from Bulgaria for HTS 2916.14.00, which is described as "Esters Of Methacrylic Acid."[298] There is no information on the record of this proceeding that would indicate that this HTS category is less specific to the input used by Mandatory Respondents than the data available from the Philippines. Therefore, we find that this is specific to the input used by Mandatory Respondents and otherwise fulfills the Department's criteria for surrogate value data.

Wheat Flour: For the Preliminary Determination we valued the wheat flour used by Mandatory Respondents using HTS 1101.00.1009: "Other." Liberty Woods et al. argue that this is flour other than durum or semolina flour, and that the Bulgarian data does not make a similar distinction. The available Bulgarian data falls under HTS 1101.00.15: "Flour Of Common Wheat And Spelt."[299] There is no information on the record of this proceeding that would indicate that this HTS category is less specific to the input used by Mandatory Respondents than the data available from the Philippines. Therefore, we find that the Bulgarian data is specific to the input used by Mandatory Respondents and otherwise fulfills the Department's criteria for surrogate value data.

Titanium Dioxide: Liberty Woods et al. argue that the value for titanium dioxide from Bulgaria does not break out pigments, inorganic pigments, and other preparations, while the values from the Philippines are reported separately. We note that the only information on the record regarding the titanium dioxide used by Mandatory Respondents states that it is "titanium dioxide, white powder."[300] The available Bulgarian HTS category is described as "Pigments And Preparations Based On Titanium Dioxide."[301] We find that there is no information on the record of this proceeding that would indicate that this HTS category is less specific to the input used by Mandatory Respondents than the data available from the Philippines which does not break out pigments, inorganic pigments, and other preparations. Therefore, we find that the Bulgarian data is specific to the input used by Mandatory Respondents as described on the record and otherwise fulfills the Department's criteria for surrogate value data.

EPE: For the Preliminary Determination we valued the EPE used by Mandatory Respondents using HTS 3921.12.1900: "Other plates, sheets, film, foil and strip, of plastics." Liberty Woods et al. argue that this category distinguishes between plates and sheets of styrene, and the Bulgarian data does not. However, based on the full descriptions of the HTS categories placed

[297] See Petitioners' Comments dated February 22, 2013, at Exhibit 11.
[298] See id. at Exhibit 11.
[299] See id.
[300] See Letter to the Secretary of Commerce from Sanfortune "Section C&D Questionnaire Response" (January 25, 2013) at Exhibit D-2.
[301] See Petitioners' Comments dated February 22, 2013, at Exhibit 11.

on the record by Liberty Woods et al., both HTS categories include both plates and sheets of styrene, and both exclude tapes and self-adhesives.[302] Therefore, we find the allegation that the HTS category for EPE from the Philippines is a better match for the input used by Mandatory Respondents to be misplaced and that there is no information on the record of this proceeding that would indicate that the Bulgarian HTS category is less specific to the input used by Mandatory Respondents than the data available from the Philippines. Therefore, we find that the Bulgarian data is specific to the input used by Mandatory Respondents and otherwise fulfills the Department's criteria for surrogate value data.

Quartz Sand: For the Preliminary Determination the Department used HTS category 2505.10.0002, which is specific to quartz sand and excludes silica sand. The only HTS category available from Bulgaria is 2505.10.00, which includes both quartz sand and silica sand. Mandatory Respondents reported the input as "quartz sand."[303] Therefore, while we note that this category may be less specific to the input used by Mandatory Respondents than the HTS category from the Philippines, the Bulgarian data does include the input used. Given the Department's preference to value all FOPs utilizing data from the primary surrogate country,[304] and to consider alternatives only when a suitable value from the primary surrogate country does not exist on the record, [305] we find the Bulgarian HTS category sufficiently suitable for valuing this minor FOP such that it is unnecessary to depart from Department practice. Finally, although we find that the Bulgarian data for quartz sand may not be as specific as the data available from the Philippines, the core and face veneer inputs and the surrogate financial ratios, as discussed above, account for the vast majority of NV[306] and, thus, are by far the predominant factors in selecting a surrogate country.[307]

Comment 8: Other Philippine Surrogate Value Considerations

Dehua TB et al.'s Case Brief:

- The Department incorrectly calculated the Philippine water surrogate value from the Local Water Utilities Administration by averaging two values which are based on water prices in Manila, rather than including water prices in the rest of the Philippines in the average, which is more representative.

[302] See Liberty Woods et al. Rebuttal Brief, dated July 15, 2013, at Exhibit 1.
[303] See Letter to the Secretary of Commerce from Jiangyang "Supplemental Section D Questionnaire Response" (March 4, 2013) at Exhibit SQ4-4.
[304] See Clearon Corp. v. United States, 2013 CIT LEXIS 27, *19-22 (February 20, 2013) ("Clearon Corp."); this preference is also directed by the Department's regulations, see 19 CFR 351.408(c)(2) (the Department "normally will value all factors in a single surrogate country.").
[305] See e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2B; Wooden Bedroom Furniture LTFV and accompanying Issues and Decision Memorandum at Comment 3.
[306] See Hearing Transcript at 36 (Gregory Menegaz on behalf of Mandatory Respondents: "The financials and the veneers obviously are drivers of the margins. Just like in a steel case, steel and financials would be drivers of margins.").
[307] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

Mandatory Respondents' Case Brief:

- The Department should change the Philippine value for bone glue because the record indicates that the glue used by Mandatory Respondents is industrial rather than edible bone glue.

Department's Position: As noted above in Comment 7, we have selected Bulgaria as the primary surrogate country. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.[308] For this final determination, the record contains suitable values for the factors listed above from the primary surrogate country. Therefore, because we are not using data from the Philippines to value water or bone glue, arguments regarding the appropriate Philippine surrogate value, as well as arguments regarding specific calculations and adjustments to Philippine surrogate values, are moot for this final determination.

Comment 9: Classification of Auxiliary Materials in Lessoplast 2012

Liberty Woods, et al.'s Case Brief:

- Lessoplast's financial statements categorize "auxiliary materials" and "basic raw materials" in the same note under "expenses for raw materials."
- Petitioners' calculated ratios categorize "auxiliary materials" as factory overhead.
- If the Department determines to use the Lessoplast 2012 financial statements it must categorize Lessoplast's "auxiliary materials" expense as raw materials to avoid overstating factory overhead.

Department's Position: We agree with Liberty Woods, et al., that Lessoplast's "auxiliary materials" should be classified under raw materials rather than factory overhead. Record evidence demonstrates that in their normal books and records, Mandatory Respondents classify only the largest, or most basic, material inputs as "raw" materials, while the companies' "auxiliary" materials included significant inputs which have been reported as FOPs to the Department.[309] Consequently, taking into account the detailed nature of Lessoplast's financial statements with regard to material expenses (i.e., basic raw materials, auxiliary materials, spare parts and accessories, and other materials have all been listed as separate categories),[310] the Department finds that the material inputs that this particular industry records as raw and auxiliary material expenses are consistent with the material inputs reported as factors for this case, while the residual financial statement material input expenses reflect overhead items. Accordingly, the Department has classified Lessoplast's "auxiliary materials" as raw materials in the calculation of surrogate financial ratios for this final determination.

[308] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum ("Fish NSR5 Final Results") at Comment 2B; see also Wooden Bedroom Furniture LTFV and accompanying Issues and Decision Memorandum at Comment 3.
[309] See Jiangyang Verification Report at 20; Sanfortune Verification Report at 18.
[310] See Lessoplast 2012 at Note 6.

Comment 10: Brokerage and Handling

Mandatory Respondents' Case Brief:

- Mandatory Respondents have demonstrated that they incurred brokerage and handling charges very differently from the way it is charged in the Doing Business in the Philippines report which the Department used to value brokerage and handling for the Preliminary Determination.
- Sanfortune exported in 40 foot containers and was charged per-load, and the Jiangyang Group exported in both 40 foot containers and by breakbulk shipping. Neither company was charged per-kilogram.
- Mandatory Respondents provided much more specific surrogate information which can be used to value brokerage and handling, in the form of price quote information collected from Philippine logistics companies by an employee of Far East American.
- Based on information from Kerry ATS Logistics, a Philippine logistics company, the charges for brokerage and handling are based only on container size, not on the amount of merchandise in the container on either a kilogram or cubic meter basis.
- There is only one surrogate value on the record for brokerage and handling charged on a breakbulk basis, from Kerry ATS Logistics in the Philippines.
- The shipments made by both Jiangyang and Sanfortune on a container basis had a maximum load of 26,000 kilograms per 40 foot container.
- There is definitive proof on the record that the Doing Business series includes the cost of obtaining a letter of credit in the total of the brokerage and handling fees. The cost of obtaining a letter of credit in the Philippines is $50, so the Department should deduct that amount from the cost of brokerage and handling if it continues to use the Doing Business report.

Petitioners' Rebuttal Case Brief:

- The price quotes submitted by Far East American are not contemporaneous to the POI, do not represent a broad market average, and are not publicly available.
- The price quotes are unusable because they combine expenses which are per bill of lading with expenses that are per container or per set of documents. Additionally, certain expenses are excluded without explanation, and Far East American does not address the fact that the quotes state that there may be additional costs and that certain quotes combine costs in Philippine pesos and U.S. dollars.
- Using cubic meters as the denominator of the brokerage and handling calculation is not credible because the maximum volume is not used by Mandatory Respondents as they first hit the maximum allowable product weight for the container.
- The Department has previously rejected arguments that it should use maximum container weight rather than the explicit weight of 10 metric tons on which the Doing Business reports are based.[311]
- According to the Doing Business report, a letter of credit is not one of the documents that is required for exportation, so there is no basis for the Department to deduct the cost from the total brokerage and handling expenses.

[311] Citing Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17436 (March 26, 2012) and accompanying Issues and Decision Memorandum at 16-17.

Department's Position: We agree with Mandatory Respondents and Petitioners, in part. With regard to the prices provided by Far East American based on its research in the Philippines as well as the Doing Business report from the Philippines, it is the Department's preference to value all FOPs utilizing data from the primary surrogate country[312] and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.[313] As the Department has selected Bulgaria as the primary surrogate country, and there is a suitable value for brokerage and handling on the record from Bulgaria, we are not considering the Philippine values for the final determination.

With regard to the World Bank's Doing Business 2013: Bulgaria report ("Doing Business: Bulgaria"),[314] the Department has determined that 10 metric tons ("MT") should continue to be used to calculate the brokerage and handling surrogate value because this is the weight of the shipment in a 20-foot container for which participants in the Doing Business survey reported brokerage and handling costs. Specifically, the brokerage and handling costs used to calculate the surrogate value were based upon the assumption that a 20-foot container contained 10 MT of product. If the Department were to use a different container load, such as the container capacity in cubic meters as argued by Mandatory Respondents, it would be using a weight not related to the costs reported in the Doing Business: Bulgaria survey which would result in an incorrect per-unit cost. Using 10 MT in the per-unit calculation maintains the relationship between costs and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), makes use of data from the same source, and is consistent with the Department's past practice.[315]

Moreover, we disagree with Mandatory Respondents' contention that brokerage and handling costs are always charged on a per-container basis regardless of weight. To support their assertion, Mandatory Respondents provided brokerage and handling rates from specific logistics companies located in the Philippines. However, the Doing Business survey asked respondents to "{b}efore completing the survey, please carefully review the assumptions of the case study."[316] The 10 MT weight is a clear reporting criterion in the survey assumptions for participants. Although freight forwarders may under certain circumstances charge on a per-container basis rather than a weight basis, the participants in this survey, which is the source of the brokerage and handling surrogate value, were clearly instructed to report the cost for a 20-foot container weighing 10 MT.

The Department agrees with Mandatory Respondents that the cost of obtaining a letter of credit should be excluded from the total brokerage and handling costs reported in the Doing Business survey. Mandatory Respondents provided extensive evidence from the World Bank that a letter of credit is included in the reported costs of "documents preparation" included in the Doing Business: Bulgaria.[317] Additionally, we agree that there is no evidence on the record that they obtained a letter of credit in the process of exporting the merchandise under consideration. Further, we note that Petitioners have not argued that Mandatory Respondents

[312] See Clearon Corp. 2013 CIT LEXIS 27, *19-22 (February 20, 2013); see also 19 CFR 351.408(c)(2)
[313] See, e.g. Fish NSR5 Final Results at Comment 2B; see also Wooden Bedroom Furniture LTFV and accompanying Issues and Decision Memorandum at Comment 3
[314] See Petitioners' Rebuttal Surrogate Value Data at Exhibit 17.
[315] See, e.g. Steel Nails AR3, 78 FR 16651 (March 18, 2013), and accompanying Issues and Decision Memorandum at Comment 3R.
[316] See Petitioners' Rebuttal Surrogate Value Data at Exhibit 17 at pg. 78.
[317] See Respondent Post-prelim SV Comments at Exhibit 10.

did obtain a letter of credit, only that the Doing Business: Bulgaria survey does not include a letter of credit in its methodology, which is contradicted by the evidence on the record. Mandatory Respondents placed information on the record regarding the cost of obtaining a letter of credit in Indonesia, the Philippines, and Thailand. However, they did not provide the cost of obtaining a letter of credit in Bulgaria. Therefore, for this final determination, we have deducted the average of the costs of obtaining a letter of credit which are on the record of this proceeding from the total cost of brokerage and handling in Bulgaria as calculated by the Doing Business: Bulgaria report.[318]

Comment 11: Inland Freight Surrogate Value

Mandatory Respondents' Case Brief:

- Doing Business: Camarines Sur offers the most suitable source by which to value Mandatory Respondents' inland truck freight because the distances captured in that report, a factor critical to the expense of truck shipments, are closest to the distances from respondents' facilities to the port of export. However, if the Department continues to use the CTAP rates, it must make certain adjustments:
- In the Preliminary Determination, the Department overstated Mandatory Respondents' trucking costs by averaging 20 foot and 40 foot container rates because the record is clear that Mandatory Respondents shipped in 40 foot containers.
- Because the unit rates used in the Preliminary Determination demonstrate a premium for shorter distances, the Department should calculate truck freight rates that take into consideration Mandatory Respondents' reported distances to the port.
- The Department should use the maximum cubic meter capacity of a 40-foot container to derive a per-cubic meter freight rate because Mandatory Respondents have shown that freight is charged on the basis of a full container load.
- In contrast, the Department's preliminary methodology takes the extra step of converting a per-kg rate by other parties' assertions concerning the average density of wood types to arrive at a per-cubic meter rate.
- As Mandatory Respondents based the weights listed on their packing lists on their knowledgeable estimation in the normal course of business, certain potential inconsistent weights for the same CONNUMs may result from dividing the gross weights by the cubic meters for any given transaction and, as such, assigning a cubic meter cost directly based on the maximum cubic meter volume of a container would be the most accurate method.

Petitioners' Rebuttal Case Brief:

- In MLWF from the PRC, the Department rejected Doing Business: Camarines Sur for valuing truck freight because it was not considered to be a broad market average.[319]
- Mandatory Respondents' argument that distances to the port should be considered in valuing truck freight overlooks the fact that the Department must also value inbound freight for material inputs, which are not specific to port distances.
- Mandatory Respondents' argument that the Department should only consider costs for 40-foot containers is irrelevant because the record does not indicate whether inputs purchased by Mandatory Respondents were shipped in 40-foot containers.

[318] See Final Factor Valuation Memorandum at Attachment 4.
[319] See MLWF LTFV and accompanying Issues and Decision Memorandum at Comment 18.

- Mandatory Respondents' argument that the Department should allocate freight rates over the maximum volume of a container ignores the inbound freight component being valued.
- Calculating a freight rate based on maximum allowable volume of a container also ignores the fact that Mandatory Respondents' shipments of plywood would reach the maximum weight limit of a container before reaching the maximum volume of a container, i.e., Mandatory Respondents' shipments of plywood should have significant excess volume in a container.

Department's Position: Because the Department has determined that Bulgaria is the appropriate surrogate country for this final determination, as explained in Comment 7, parties' arguments regarding the appropriate source and calculation for valuing inland freight in the Philippines are rendered moot. As noted above, it is the Department's preference to value all FOP utilizing data from the primary surrogate country[320] and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.[321] Because the Department has selected Bulgaria as the primary surrogate country, and there is a suitable value for brokerage and handling on the record from Bulgaria, we are not considering the Philippine values for the final determination. However, insofar as those arguments may be applied to the only potential surrogate value on the record for valuing inland freight in the primary surrogate country, i.e., Doing Business: Bulgaria,[322] the Department is providing a limited response to concerns presented by Mandatory Respondents. We note that the Doing Business publications put forth specific parameters to participants in the World Bank surveys underlying the publications. Specifically, the inland freight costs used to calculate the surrogate value were based upon the assumption that a 20-foot container contained 10 MT of product.[323] If the Department were to use a different container load, such as the container capacity in cubic meters as argued by Mandatory Respondents, it would be using a weight not related to the costs reported in the Doing Business: Bulgaria survey which would result in an incorrect per-unit cost. Using 10 MT in the per-unit calculation maintains the relationship between costs and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), makes use of data from the same source, and is consistent with the Department's past practice.[324]

Notwithstanding the Department's current practice of calculating surrogate values based on Doing Business publications using the parameters assumed in the Doing Business methodology, we agree with Petitioners that record evidence demonstrates that using the maximum volume of a full container ignores the possibility that a shipment would reach the maximum container weight before reaching the maximum container volume.[325] As such, we do not find it reasonable to calculate a per-cubic meter surrogate value using the maximum allowable volume of a container, as suggested by Mandatory Respondents.[326] Instead, we continue to find, as was the case in the

[320] See Clearon Corp. 2013 CIT LEXIS 27, *19-22 (February 20, 2013); see also 19 CFR 351.408(c)(2).
[321] See, e.g., Fish NSR5 Final Results at Comment 2B.
[322] See Petitioners' Rebuttal Surrogate Value Data at Exhibit 17.
[323] See Petitioners' Rebuttal Surrogate Value Data at Exhibit 17 at pg. 78.
[324] See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011) and accompanying Issues and Decision Memorandum at Comment 6; Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part, 77 FR 14495 (March 12, 2012) and accompanying Issues and Decision Memorandum at Comment 11.
[325] See Petitioners' Rebuttal Brief at 30.
[326] See Mandatory Respondents' Case Brief at 48-49.

Preliminary Determination, that freight rates denominated on a per-kg, per-km, basis, should be converted to a per-cubic meter basis using: 1) the average densities of various wood species as reflected by record evidence submitted by interested parties for inbound freight associated with raw material inputs; and 2) the gross weights of the merchandise under consideration reported by Mandatory Respondents for domestic inland freight from plant to port of exit.[327] For inbound freight associated with raw material inputs that are not reported on a per-kg basis, there is no need for any conversion of the surrogate value derived from the Doing Business publication, which is already on a per-kg, per-km basis.[328]

While we note that Mandatory Respondents have stated that the weights reported on their packing lists are estimates and may result in some inconsistencies when dividing the gross weights by the cubic meters for any given transaction, this issue was the subject of a supplemental questionnaire subsequent to the Preliminary Determination, wherein the Department specifically asked about the variance between reported weights for identical products.[329] In its response, Jiangyang stated that it identified certain errors in its reporting methodology and that "{o}nce the few isolated errors involving returns are corrected, the extreme variance in reported weights highlighted in the Department's question no longer exists."[330] While Jiangyang also stated that it physically weighed inventory for the purpose of responding to this supplemental questionnaire "in case the Department determines to substitute this method of weight for the final determination,"[331] the weights, less packing, that Jiangyang reported appear to be the average weight for all products.[332] Similarly, Sanfortune also physically weighed samples of different inventory and reported the averaged weights for each type of product (i.e., veneer core, MDF core, and sandwich core).[333] Because Mandatory Respondents provided average weights for groups of models, regardless of thickness or number of plies, we do not find this alternative methodology an appropriate substitute for the weights recorded on actual sales documentation produced in the normal course of business and submitted to freight forwarders for purposes of ship manifests and U.S. Customs and Border Protection for purposes of entry into the United States. Accordingly, we are continuing to use the gross weights reported by Mandatory Respondents, corrected by Jiangyang for the errors referenced above, for purposes of converting the surrogate value derived from the World Bank's Doing Business: Bulgaria publication for inland freight from plant to port of exit to a cubic meter, per-km basis.

[327] See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9 "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Preliminary Analysis Memo for Xuzhou Jiangyang Wood Industries Co., Ltd." (April 29, 2013) at 5-6; Memorandum to the File from Katie Marksberry, Senior International Trade Compliance Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9 "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Preliminary Analysis Memo for Linyi Sanfortune Wood Co., Ltd." (April 29, 2013) at 5-6, 9.
[328] See Final Factor Valuation Memorandum at 7 and Attachments 1 and 4.
[329] See Letter to the Secretary of Commerce from Jiangyang "9th Supplemental Questionnaire Response" (May 16, 2013) ("Jiangyang May 16 Submission"); Letter to the Secretary of Commerce from Sanfortune "Supplemental Questionnaire Response" (May 16, 2013) ("Sanfortune May 16 Submission").
[330] See Jiangyang May 16 Submission at 6-7.
[331] See id. at 8.
[332] See id. at 8 and Exhibit SQ9-4.
[333] See Sanfortune May 16 Submission at 4 and Exhibit SQ9-2.

Comment 12: The Jiangyang Group's Unreported Sales Channel

Petitioners' Case Brief:

- Jiangyang failed to fully disclose the facts of its business with Reseller X[334] and, despite its claims to the contrary, had knowledge that the merchandise it sold to Reseller X was destined for the United States, and to Far East, in particular.
- Jiangyang's repeated failures to fully disclose the facts of its business with Reseller X impeded the Department's ability to investigate whether Jiangyang had knowledge and warrants AFA.
- As AFA, the Department should apply the highest transaction-specific margin to the value of these sales identified at verification.

Mandatory Respondents' Case and Rebuttal Brief:

- Jiangyang stated it was only reporting sales exported by Jiangyang during the POI and the Department did not challenge the scope of sales reported.
- The Separate Rates Application[335] and Policy Bulletin 5.1[336] state that the focus is on the exporter rather than the manufacturer and the quantity and value questionnaire[337] instructs parties to include only sales exported by the company directly to the United States.
- Because the focus is on the exporter, a producer's knowledge of the ultimate destination of the merchandise is not a relevant factor in determining reporting obligations in NME cases and the "knowledge test" is only used in ME cases. This practice was explicitly stated in the PRC OCTG Investigation[338] and the recent Vietnam Shrimp AR6 Final.[339]
- The record demonstrates that Jiangyang sold plywood to Reseller X by domestic VAT invoices in RMB.
- CBP data reflects Reseller X in the Manufacturer Name or ID fields and sales documents from Reseller X demonstrate that the supplier is not listed.
- Reseller X's financial statements indicate a profit, demonstrating arms-length sales.
- Jiangyang correctly reported that it had no knowledge that any sale to Reseller X was destined for the United States at the time of sale and Far East was under no obligation to inform Jiangyang of purchases from other companies.
- Far East specifically informed the Department that Reseller X had sold Jiangyang plywood to Far East, which Far East resold through a downstream affiliate.

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[334] See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office 9, "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Business Proprietary Information Memo for Xuzhou Jiangyang Wood Industries Co., Ltd., for the Final Determination" dated concurrently with this memorandum ("BPI Memo") at Note 1.

[335] See the Department's Separate Rate Application for the PRC at 2, available at http://ia.ita.doc.gov/nme/nme-sep-rate.html.

[336] See Policy Bulletin 5.1, "Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries" available at http://ia.ita.doc.gov/policy/bull05-1.pdf.

[337] See Letter from Catherine Bertrand, Program Manager, Office 9, regarding quantity and value questionnaire (October 18, 2012) at Attachment I.

[338] See 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) ("PRC OCTG Investigation") and accompanying Issues and Decision Memorandum at Comment 31.

[339] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 77 FR 55800 (September 11, 2012) ("Vietnam Shrimp AR6 Final") and accompanying Issues and Decision Memorandum at Comment 8.

- Because Far East negotiated directly with Reseller X, an unaffiliated company, those sales were not exported/sold to the United States by Jiangyang and, thus, are not reportable sales.
- If the Department believes these sales should have been reported, it should state the legal basis and provide Jiangyang the opportunity to report those sales.
- Notwithstanding the contention that no information is missing from the record, if the Department determines that information is missing from the record, the record demonstrates that Jiangyang cooperated to the best of its ability suggesting that only neutral facts available would be warranted.
- The Department could use, as facts available, the invoices obtained at verification for sales sourced from Reseller X using the model information and pricing contained therein.

Liberty Woods et al. Rebuttal Brief:

- The Department applies a "knowledge test" to determine the company that was first to have knowledge that goods were shipped to the United States and to identify the proper respondent for calculating a dumping margin.
- In NME cases, the Department is limited to looking at the first sale occurring in a convertible currency.
- Jiangyang was not the exporter of the goods in question and nowhere did Jiangyang state that it knew the destination of the goods at the time they were sold domestically to the reseller, rather, Jiangyang had general knowledge that some of the goods may end up in the United States.
- The Department preliminarily granted Reseller X a combination rate for exports produced by Jiangyang.
- The Department is faced with a similar circumstance in PRC Activated Carbon, wherein the Department reviews a producer of subject merchandise as well as a PRC reseller of that producer's subject merchandise.[340]
- Petitioners have failed to elevate what appears to be an inadvertent and misinformed "finding" in the Department's verification report to an AFA situation.

Department's Position: While interested parties have commented at length on statements made by the Jiangyang Group and Far East on the record of this investigation, the facts warrant reiteration to provide a context for our analysis. We note that Jiangyang's initial Section A questionnaire response began with a declaration of affiliation with Jiangheng, by ownership and management, and with Far East, Jiangyang's U.S. affiliate and majority shareholder.[341] Jiangyang further stated that they "will be reporting Jiangyang's sales through {Far East} as part of a joint response of Jiangyang and Jiangheng and {Far East} in this investigation."[342] Each and every questionnaire response jointly filed on behalf of Jiangyang, Jiangheng, and Far East, was accompanied by certifications signed by Du Jiang, General Manager of Jiangyang and Jiangheng, and Bruce Peterson, President of Far East, or Greg Simon, Vice President of Far East, that stated these principals "prepared or otherwise supervised the preparation of" the submissions

[340] See Liberty Woods et al. Rebuttal Brief at 35, citing to Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 26748 (May 8, 2013) ("PRC Carbon AR5 Prelim").
[341] See Letter to the Secretary of Commerce from Jiangyang "Section A Questionnaire Response" (December 28, 2012) ("Jiangyang SAQR") at 1 question 1a.
[342] See id.

and certifying that "the information contained in this submission is accurate and complete to the best of my knowledge."[343]

A. The Record with Respect to Jiangyang's Sales to the Reseller

The initial Section A questionnaire explicitly directs respondents to report "all merchandise under consideration produced and sold by your company."[344] Question 10 of the Section A questionnaire explicitly directs respondents to "contact the official in charge within two weeks of receipt of this questionnaire" if the respondent is "aware that any of the merchandise that you sold to another company in your country was ultimately shipped to the United States…"[345] Jiangyang responded that "Jiangyang and Jiangheng are not aware any of the merchandise they sold to another company in the PRC was ultimately shipped to the United States."[346]

In a supplemental Section A questionnaire, the Department asked a number of questions about a reference in Jiangyang's 2011 audited report to Reseller X.[347] Jiangyang reported that Reseller X is not affiliated with the Jiangyang Group, Far East, or Company A[348] and that the Jiangyang Group did not ship any merchandise under consideration to the United States on behalf of Reseller X.[349] Jiangyang further stated that it "may be aware that some merchandise under consideration it sold to {Reseller X} was potentially destined for the United States but it has no control over {Reseller X}'s re-sales."[350] Jiangyang included in its submission sales documentation for a sale made during the POI to Reseller X,[351] in the form of domestic VAT invoices documenting payment in RMB.[352]

In a supplemental Section A, C, and D, questionnaire the Department asked the Jiangyang Group and Far East[353] about a specific code (i.e., "JY")[354] appended to certain purchases from Reseller X in Company A's accounting records.[355] On April 5, 2013, shortly prior to the Preliminary

[343] See, e.g., Jiangyang SAQR; Letter to the Secretary of Commerce from Jiangyang "Section C and D Questionnaire Response" (January 28, 2013) ("Jiangyang SCDQR"); Letter to the Secretary of Commerce from Jiangyang "Supplemental Section A Questionnaire Response" (February 5, 2013) ("Jiangyang SuppA"); Letter to the Secretary of Commerce from Jiangyang "Supplemental Section C Questionnaire Response" (February 25, 2013) ("Jiangyang SuppC"); Letter to the Secretary of Commerce from Jiangyang "Supplemental Section D Questionnaire Response" (March 5, 2013); Letter to the Secretary of Commerce from Jiangyang "Second Supplemental Section A Questionnaire Response" (March 8, 2013) ("Jiangyang SuppA2"); Letter to the Secretary of Commerce from Jiangyang "Second Supplemental Section C Questionnaire Response" (March 15, 2013) ("Jiangyang SuppC2"); Letter to the Secretary of Commerce from Jiangyang "7th Supplemental Questionnaire Response" (April 8, 2013) ("Jiangyang SuppACD").

[344] See id.

[345] See Jiangyang SAQR at 39-40 question 10.

[346] See id.

[347] See Jiangyang SuppA at 23-24.

[348] Company A is a U.S. company controlled by members of Far East's management. The name of this company is proprietary information. See BPI Memo at Note 2.

[349] See id.

[350] See Jiangyang SuppA at 24.

[351] See Jiangyang SuppA at SQ1-10.

[352] See Mandatory Respondents' Rebuttal Brief at 48.

[353] This questionnaire was addressed to Jiangyang, Jiangheng, and Far East, as were all other supplemental questionnaires in this investigation, and was also certified by all parties. See Jiangyang SuppACD at certifications and 1.

[354] While this code was designated as proprietary information in Jiangyang's supplemental response, it was publicly stated in Jiangyang's case brief. See Mandatory Respondents' Case Brief at 13.

[355] See Jiangyang SuppACD at 10-11.

Determination, Jiangyang responded in general terms that Far East was able to designate"JY" on purchase orders based on negotiations with Reseller X, but did not provide any further detail.[356]

Subsequent to the publication of the Preliminary Determination, which was signed on April 29, 2013,[357] the Department conducted a verification of the responses of the Jiangyang Group and Far East from June 3, 2013, through June 12, 2013.[358] In reviewing Far East's sales reconciliation at verification we specifically asked about entries attributed to Reseller X appended with "JY" in Far East's accounting records.[359] Company officials stated that these entries represented merchandise produced by Jiangyang, purchased by Far East from Reseller X and resold by Far East during the POI.[360] Company officials confirmed that these sales were not reported in the U.S. Sales database.[361]

B. Jiangyang's Requests for Exclusions and Reporting Allowances

As part of Jiangyang's Section A response, Far East disclosed that members of its management control a U.S. company, Company A, which purchased merchandise under consideration from Far East that was exported by Jiangyang.[362] Jiangyang stated that the burden of reporting this company's downstream sales was so great that it intended to report Far East's sales to Company A as though they were sales to unaffiliated customers.[363] In a Supplemental Section A questionnaire, the Department advised Jiangyang that it was considering Jiangyang's intended course of action with respect to the aforementioned sales but may require Jiangyang to report its downstream sales made by Company A to unaffiliated customers.[364] In the interim, the Department requested considerable information and documentation regarding Company A, including financial statements for 2010 and 2011 and monthly trial balances for the POI.[365] On January 17, 2013, the Department advised Jiangyang that it was required to report the downstream sales to the first unaffiliated customer of Company A in its U.S. Sales database.[366] On February 5, 2013, Jiangyang reported to the Department that it had determined that "none of the sales during the POI from {Far East} to Company A consisted of subject merchandise exported from the mandatory affiliated respondent or its affiliates."[367]

On January 17, 2013, Jiangyang submitted a letter stating its understanding of Department policy with respect to reporting requirements for CEP sales in investigations, and arguing that respondents are not expected to report sales during the POI that "entered the United States prior to the POI if, and only if, the respondent can link its U.S. sales back to specific entries (and entry dates)."[368] Jiangyang further stated that it planned to exclude sales that entered the United States

[356] See Mandatory Respondents' Case Brief at 13; see also Jiangyang SuppACD at 10-11.
[357] See Preliminary Determination and accompanying Issues and Decision Memorandum at 1 and 33.
[358] See Jiangyang Verification Report; Far East Verification Report.
[359] See Far East Verification Report at 2, 9-10 and Exhibits 7 and 13.
[360] See id.
[361] See id. at 2.
[362] See Jiangyang SAQR at 23.
[363] See id.
[364] See Jiangyang SuppA at 16.
[365] See Jiangyang SuppA at 16-18 and Exhibit SQ1-20.
[366] See Letter to Jiangyang from Catherine Bertrand, Program Manager, Office 9 "Sales Made by Far East American, Inc., to U.S. Affiliate" (January 17, 2013) ("Company A Letter") at 1.
[367] See Jiangyang SuppA at 16-17
[368] See Letter to the Secretary of Commerce from Jiangyang "Clarification of US Sales Reporting" (January 17, 2013) at 1-2.

prior to the first day of the POI and requested notice in the event that this understanding was incorrect.[369] On January 18, 2013, the Department advised Jiangyang that it is "required to report all sales made to unaffiliated U.S. customers during the POI by all of Jiangyang's affiliates, including its U.S. affiliates," and that "the date of sale should determine the sales to unaffiliated U.S. customers that you report in your U.S. sales database."[370]

In its initial Section C questionnaire response, Jiangyang stated that it had sales during the POI of damaged product that was no longer sellable in the normal course of business, which it reported as salvage sales and argued that these sales should be excluded from any dumping calculation.[371] On April 3, 2013, the Department issued to Jiangyang a supplemental questionnaire regarding these sales.[372] In the Preliminary Determination we stated that we would include Jiangyang's salvage sales in the margin calculation but will consider whether to exclude these sales, based on Jiangyang's response to the outstanding supplemental questionnaire and any comments received from interested parties, in the final determination.[373] As noted in the Jiangyang Final Analysis Memo, we have ultimately determined to exclude Jiangyang's salvage sales for this final determination,[374] based on Jiangyang's full disclosure of the circumstances of these sales in its supplemental questionnaire response[375] such that the Department is satisfied that a complete and thorough explanation exists on the record of this investigation.

C. Analysis

The record of this investigation conclusively demonstrates that Jiangyang and Far East did not disclose the full fact pattern of Jiangyang's sales to Reseller X that were then resold to, and then by, Far East until directly questioned at verification. The Jiangyang Group was asked in the initial Section A questionnaire to contact the officials in charge if it is aware that any of the merchandise it sold to another company in the PRC was ultimately shipped to the United States and Jiangyang clearly stated that it was not aware that any merchandise it sold to another PRC company was shipped to the United States.[376] This "joint response of Jiangyang and Jiangheng and {Far East}"[377] was certified as accurate by Bruce Peterson, President of Far East, and accompanied with the statement that he prepared or supervised the preparation of this submission and that it was accurate and complete.[378] While Jiangyang specifically phrased its response in terms of whether Jiangyang and Jiangheng were aware of any merchandise that was ultimately shipped to the United States,[379] as part of a joint response on behalf of all affiliates this question was not only directed at Jiangyang and Jiangheng, but was also directed at Far East, that should have provided the information it knew was missing from the response. At a minimum, as

[369] See id. at 2.
[370] See Letter to Jiangyang from Catherine Bertrand, Program Manager, Office 9 "Clarification of U.S. Sales Reporting" (January 18, 2013).
[371] See Jiangyang SCDQR at C-46-47.
[372] See Letter from Catherine Bertrand, Program Manager, Office 9, "Salvage Sale Supplemental Questionnaire" (April 3, 2013).
[373] See Preliminary Determination and accompanying Decision Memo at 22-23.
[374] See Jiangyang Final Analysis Memo at 4-5.
[375] See Letter to the Secretary of Commerce from Jiangyang "8th Supplemental Questionnaire Response" (April 17, 2013).
[376] See Jiangyang SAQR at 39-40 question 10.
[377] See id. at 1.
[378] See id. at company certifications.
[379] See id. at 39-40.

majority owner of Jiangyang,[380] Far East's cognizance of the fact that Jiangyang's goods were sold to a reseller in the PRC and then resold to Far East, before being sold to unaffiliated U.S. customers should have warranted acknowledgement of the facts in its initial Section A submission.

Jiangyang argues that its response to the aforementioned question in the Section A questionnaire was not a misrepresentation because it stated in that submission "where a response from {Far East} appears to be warranted, we will so note in a separate paragraph. If there is no {Far East} response to a particular question that signifies that the question was not relevant to {Far East}."[381] Thus, Jiangyang contends, the statement in question was that of Jiangyang and Jiangheng and it was not relevant to Far East. Further, Jiangyang argues that Far East "had no reason to inform Jiangyang of the details of all of {Far East}'s business, including this detail. That would have been within the discretion of the owners of {Far East} to share such information. There is not a shred of record evidence that {Far East} shared this information with Jiangyang."[382] While that may be true, Far East certainly had an obligation to inform the Department of the details of all of its business regarding any sales originating from its affiliate, through a reseller.

Having prefaced its initial Section A questionnaire response that the submission is a "joint response" on behalf of the affiliated group of companies,[383] Jiangyang now wishes to parse out its responses and take the position that Far East's business is separate from the Jiangyang Group for the purposes of its submissions to the Department. Further, while Jiangyang claims that its responses for the PRC producers and Far East were identified and separate, it did not apply this reporting methodology uniformly in this submission[384] nor did it apply this approach to subsequent submissions.[385] We note that the question of whether sales of merchandise under consideration were ultimately shipped to the United States is general in nature and all affiliates party to the joint response were in a position, and under an obligation, to respond. Whether Far East believed it had no reason to inform Jiangyang of the details of its business with other traders is irrelevant here and because Far East chose not to contribute to this response does not detract from the fact that the lack of response constituted a material misrepresentation.

We note that Jiangyang makes the claim in its case brief that Far East "specifically informed the Department that a particular Chinese exporter had sold Jiangyang plywood to {Far East}, which {Far East} resold through a downstream affiliate."[386] However, the only record evidence cited to by Jiangyang in support of this claim amounts to nothing more than a vague reference to Far East's ability to determine that a particular accounting designation allowed them to determine the producer of certain purchases from Reseller X.[387] Specifically, the Department directly asked about the difference between two accounting codes in Company A's accounting records.[388] In response, Jiangyang and its affiliates answered that Far East "learned at some point during or

[380] See, e.g., Jiangyang SAQR at 1.
[381] See Mandatory Respondents' Rebuttal Brief at 51-52; Jiangyang SAQR at 2.
[382] See Mandatory Respondents' Rebuttal Brief at 52.
[383] See Jiangyang SAQR at 1.
[384] See id. at 15 (reporting ownership of all affiliated companies under a single "Response:" designation).
[385] See, e.g., Jiangyang SuppA; Jiangyang SuppA2; Jiangyang CDQR; Jiangyang SuppC; Jiangyang SuppC2 (providing a single response for each relevant question on behalf of all affiliated companies).
[386] See Mandatory Respondents' Case Brief at 13.
[387] See Jiangyang SuppACD at 10-11; see also BPI Memo at Note 3.
[388] See id.

after the sales negotiations and thus indicated as 'JY' in the purchase orders."[389] Yet, the Department was not able to make sense of these statements until verification, when the true nature of this sales channel was fully disclosed.[390] In its case brief Jiangyang and its affiliates construed their questionnaire response to state that they clearly informed the Department that "JY" referred to sales of merchandise produced by Jiangyang, which is not the case.[391] Jiangyang claims that Far East explained the meaning of the accounting codes in question in early April and that if there remained any questions about the "JY" code, the Department was obligated under law to issue a supplemental questionnaire for this purpose.[392] However, the degree of disclosure suggested by Jiangyang in its case brief does not exist anywhere on the record of this investigation until this sales channel was first fully disclosed in the verification report.[393] Thus, Jiangyang's claim that this accounting code was fully explained lacks merit. Further, the Department made numerous inquiries into Jiangyang's dealings with Reseller X over a period of several months and within the strict constraints of the schedule provided for this investigation.[394] The Department certainly provided an indication to Jiangyang that this sales channel was of relevance to the Department's proceeding and the fact that Jiangyang provided vaguely worded responses to direct questions posed by the Department, and in close proximity to the Preliminary Determination, does not abrogate Jiangyang of its obligation to provide accurate responses and cooperate to the best of its ability.[395] Jiangyang and its affiliates had already certified a response that stated in unequivocal terms that they were unaware of merchandise sold to resellers in the PRC that were ultimately shipped to the United States,[396] and the Department had no reason to believe that this was not the case. Jiangyang has suggested that the Department issue additional supplemental questionnaires and provide the opportunity for Jiangyang to report the data required by the Department.[397] However, permitting Jiangyang to remedy a deficiency in its questionnaire responses that was not discovered until verification overlooks the fact that Jiangyang had multiple opportunities to remedy the deficiencies in multiple supplemental questionnaires over a period of several months.[398]

While Jiangyang and Liberty Woods et al. take note of the fact that the Department does not generally apply the knowledge test in NME cases,[399] the Department submits that knowledge is not the only issue at hand. The belated discovery that the operations of these companies may have been more intertwined than was previously understood would have prompted a line of inquiry that the Department was prevented from examining. Although the Jiangyang Group may

[389] See Mandatory Respondents' Case Brief at 13; the actual response is designated business proprietary information, see BPI Memo at Note 3. We note that while Jiangyang claims that Far East was able to make the designation as to whether the product was produced by Jiangyang "at some point during or after the sales negotiations," the fact that Far East was able to make this designation on its purchase orders to Reseller X demonstrates that Far East was aware that the goods were produced by Jiangyang before negotiations were concluded and before it placed orders with Reseller X. Further, record evidence demonstrates that Far East only maintained a unique designation for product sourced from Reseller X that was produced by Jiangyang and no other designation for product sourced from Reseller X that was produced by other manufacturers. See BPI Memo at Note 4.

[390] See Far East Verification Report at 2 and 9-10.

[391] See, e.g., Mandatory Respondents' Case Brief at 13.

[392] See Mandatory Respondents' Rebuttal Brief at 63.

[393] See Far East Verification Report at 2 and 9-10.

[394] See Jiangyang SuppA at 16-24; Jiangyang SuppA2 at 1; Jiangyang SuppACD at 7 and 10-11.

[395] See, e.g., Section 776(a)(2) of the Act.

[396] See Jiangyang SAQR at 40.

[397] See Mandatory Respondents' Rebuttal Brief at 65.

[398] See, e.g., Jiangyang SAQR; Jiangyang SuppACD.

[399] See Mandatory Respondents' Rebuttal Brief at 44-45; Liberty Woods et al. Rebuttal Brief at 34-35.

have stated that it was reporting sales of merchandise exported by Jiangyang and Jiangheng,[400] the unusual facts of this sales channel were not contemplated by the Department over the course of reviewing these responses and the fact remains that Jiangyang and its affiliated companies were under an obligation to report that it had sales to a PRC reseller that were ultimately shipped to the United States. Jiangyang acknowledges that the Section A questionnaire requests this information, but posits that actual or imputed knowledge will not automatically impact the sales reporting obligation of respondents,[401] and Jiangyang is correct in that regard. However, what does have the potential to impact the sales reporting obligation of respondents is a thorough and detailed investigation of any and all sales channels of merchandise under consideration that could be relevant to the proceeding, a process that we were prevented from undertaking. Jiangyang goes on to theorize that the instruction to "contact the official in charge" "might only apply in rare cases, such as when the NME respondents ask for treatment as an market oriented industry ('MOI') industry status."[402] However, the Department does not know the source of this notion and Jiangyang does not support this contention with any reference to legal or administrative precedent.

Liberty Woods et al. attempts to conflate the facts of this case with situations the Department has faced in other proceedings,[403] but that contention is misplaced. While Liberty Woods et al. are correct that in that case "the Department review{ed} Ningxia Huahui Activated Carbon Co., Ltd. on its own exports as well as a separate unrelated exporter who buys and resells Huahui product, i.e., Jacobi Group,"[404] the obvious distinction is that the Jacobi Group did not then resell the subject merchandise to a U.S. affiliate of Huahui.[405] Rather, in that case the PRC reseller sold all of its subject merchandise to its own U.S. affiliate.[406]

The record of this investigation demonstrates that Jiangyang requested numerous exclusions and clarification on reporting methodologies prior to the Preliminary Determination but did not request guidance on this sales channel. Jiangyang's claim that after it fully explained the facts of this sales channel, the Department chose not to ask Far East to report those sales,[407] is a mischaracterization of the record. As explained above, Jiangyang requested a reporting exclusion for sales made by Company A,[408] which was denied by the Department.[409] The Department's decision to forego additional questions regarding sales made by Company A was based in part on the representation that "{Far East} did not sell {Company A} plywood from Jiangyang or its affiliates during the POI."[410] However, subsequent to full disclosure of Jiangyang's sales channel through Reseller X at verification[411](at which time the Department

[400] See, e.g., Jiangyang SAQR at 22-23; Jiangyang SuppA at 34.
[401] See Mandatory Respondents' Rebuttal Brief at 50 n15.
[402] See id.
[403] See Liberty Woods et al. Rebuttal Brief at 35, citing to PRC Carbon AR5 Prelim.
[404] See Liberty Woods et al. Rebuttal Brief at 35.
[405] See PRC Carbon AR5 Prelim and accompanying Decision Memo at 22 ("{W}e calculated the EP for sales to the United States for Huahui, because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.").
[406] See id. ("For all of Jacobi's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act because sales of PRC-origin merchandise were made on behalf of the companies located in the PRC by a U.S. affiliate to unaffiliated purchasers in the United States.")
[407] See Mandatory Respondents' Rebuttal Brief at 60.
[408] See Jiangyang SuppA at 16.
[409] See Company A Letter at 1.
[410] See Jiangyang SuppC at 5-6.
[411] See Far East Verification Report at 2 and 9-10.

fully grasped the true meaning of Jiangyang's previous responses), a review of Company A's financial documents revealed that Company A had sales of product sourced from Reseller X with the JY designation during the POI,[412] indicating that these represented merchandise under consideration produced by Jiangyang.[413]

While Jiangyang stated on the record that Reseller X is "not affiliated with Jiangyang, Jiangheng, {Far East}, or Company A"[414] and that "the record is unequivocal that this trading company is not affiliated either with Jiangyang, Jiangheng, or {Far East},"[415] the record is not as conclusive as Jiangyang would suggest. Specifically, we note that official registration documentation submitted by Reseller X demonstrates that a principal of the Jiangyang Group is listed as a contact point.[416] Thus, we do not find the claim that the record is unequivocal with respect to any potential affiliation between the Jiangyang Group and this reseller to be accurate. We note that the submissions of the Jiangyang Group and Reseller X have been prepared and certified by the same counsel[417] who, at a minimum, should have known that the record is not as unequivocal as has been presented in briefs.[418] Because this fact was only discovered after the full disclosure of this sales channel at verification, the Department was prevented from pursuing the full line of questioning on this issue.

D. Application of Partial Facts Available

Section 776(a)(1) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record**.** As explained above, the Jiangyang Group was required to disclose this sales channel within two weeks of receipt of the initial Section A questionnaire and did not. Because the facts were not fully disclosed to us until verification, we were prevented from fully examining this sales channel, and the precise nature of the relationship between Reseller X and the Jiangyang Group and its affiliates. As such, the information required to conduct a full analysis of these sales does not exist on the record of this investigation. While the Department collected the total quantity and value of the sales sourced from Reseller X that were produced by Jiangyang, as well as two invoices dated during the POI, at verification, the record does not contain complete CONNUM-specific FOP data or U.S. sales data for these sales. Thus, we find that necessary information to conduct a complete AD margin calculation for these sales does not exist on the record.

Section 776(a)(2) of the Act provides that the Department shall also apply "facts otherwise available" if an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided in section 782(d)(i). Because the Jiangyang Group withheld accurate information regarding its sales channels and did not provide information requested by the

[412] See Jiangyang SuppA2 at Exhibit 2SA-12.
[413] See, e.g., Mandatory Respondents' Case Brief at 13.
[414] See Jiangyang SAQR at 23.
[415] See Mandatory Respondents' Rebuttal Brief at 50.
[416] See BPI Memo at Note 5.
[417] See Letter to the Secretary of Commerce from Reseller X "Separate Rate Application" (December 14, 2012) (the identity of Reseller X is proprietary, see BPI Memo at Note 1) at Attorney Certifications and, e.g., Jiangyang SAQR at Attorney Certifications.
[418] See Mandatory Respondents' Rebuttal Brief at 50.

Department when it neglected to inform us that it had sales to a PRC reseller that were ultimately sold in the United States, we find that the Jiangyang Group significantly impeded this investigation with respect to such sales such that the application of partial facts available is warranted pursuant to sections 776(a)(2)(A),(B), and (C) of the Act. Finally, because the Jiangyang Group failed to cooperate to the best of its ability by withholding necessary information, as discussed below, application of partial adverse facts available with respect to such sales, pursuant to section 776(b) of the Act, is also warranted.

E. Use of Adverse Inferences

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[419] The CAFC, in Nippon Steel,[420] noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.[421] The CAFC acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting"[422] would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries "would suffice" as well.[423] Compliance with the "best of the ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.[424] The CAFC further noted that while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[425]

We determine that, within the meaning of section 776(b) of the Act, the Jiangyang Group failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, and that the application of partial adverse facts available ("AFA") is warranted. As explained above, the Jiangyang Group failed to provide information requested by the Department and did not provide accurate responses to direct questions regarding its accounting codes and whether its sales to Reseller X were shipped to the United States. As the Jiangyang Group failed to cooperate to the best of its ability with respect to this particular sales channel, we have determined an AD margin for these sales based on partial AFA pursuant to section 776(b) of the Act.[426]

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[419] See SAA accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 at 870 (1994); Mannesmannrohren-Werke AG v. United States, 77 F. Supp. 2d 1302, 1323 (CIT 1999) ("Mannesmannrohen-Werke").
[420] See Nippon Steel 337 F. 3d 1373, 1382 (Fed. Cir. 2003).
[421] See id.
[422] See id. at 1383.
[423] See id.
[424] See id.
[425] See id.
[426] See, e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) and accompanying Issues and Decision Memorandum at Comment 10 ("{I}f an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may apply adverse inferences where the use of facts available is appropriate.").

F. Selection of the Adverse Facts Available Rate

In deciding which facts to use as partial AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner."[427] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[428]

While Jiangyang argues that the Department can use data collected at verification as facts available should the Department determine that the necessary information is missing from the record,[429] we disagree. As noted in the verification report, sales made by Far East during the POI that were produced by Jiangyang and sourced through Reseller X constituted a significant number of transactions and a considerable quantity and value.[430] Given the facts of this particular situation, it would be inappropriate to rely upon fragmentary information regarding this sales channel that was obtained at verification and that is at odds with statements made by Jiangyang and its affiliates on the record of this investigation. Further, its fragmentary nature precludes its use as a technical matter as much of the key information is missing from the record. Thus, consistent with section 776(b) of the Act and the Department's normal practice,[431] we find it appropriate to use other information placed on the record of this proceeding in selecting a partial AFA rate. Specifically, we have determined to select the highest CONNUM-specific margin calculated for the Jiangyang Group, using its own reported FOP and sales data, for a sale made during the POI as a partial AFA rate to be applied to Far East's sales of merchandise under consideration produced by Jiangyang and sourced through Reseller X.

The Department determines that this information is the most appropriate and relevant method to effectuate the purposes of AFA.[432] No corroboration of this rate is necessary because the information we are relying on as partial AFA was obtained in the course of this investigation from the Jiangyang Group and is not secondary information.[433] We note that this margin bears a

[427] See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (February 23, 1998).
[428] See SAA at 890; see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004); Mannesmannrohen-Werke, 77 F. Supp. 2d at 1323.
[429] See Mandatory Respondents' Rebuttal Brief at 67-68.
[430] See Far East Verification Report at 2 and 9-10; see also BPI Memo at Note 6.
[431] See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part, 75 FR 57449 (September 21, 2010) and accompanying Issues and Decision Memorandum at Comment 17 ("Specifically, in the final determination, the Department continues to use, as partial AFA, the highest control number-specific dumping margin calculated for TPCO.").
[432] For specific details on the calculation with respect to the application of partial AFA to the Jiangyang Group's sales through this particular sales channel, see Jiangyang Final Analysis Memo.
[433] See section 776(c) of the Act. "Secondary information" is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. See SAA at 870.

direct relationship to the Jiangyang Group's actual experience, as it is a margin which we have calculated for the Jiangyang Group in this investigation.

Comment 13: The Jiangyang Group's Warehousing Expense

Mandatory Respondents' Case Brief:

- The Department should accept Far East's fully verified warehousing expense corrections, given the company's efforts in bringing them to the attention of the Department and the insignificant value affected.

Department's Position: The Department agrees with the Jiangyang Group and will accept Far East's warehousing expense corrections, as verified by the Department.[434]

Comment 14: The Jiangyang Group's CBP Instructions

Mandatory Respondents' Case Brief:

- The cash deposit CBP instructions released by the Department for the Preliminary Determination did not properly define the Jiangyang Group.
- For the final determination, the Department should clarify the CBP instructions to ensure that product exported by Jiangyang or Jiangheng are entitled to the cash deposit rate established for the Jiangyang Group.

Liberty Woods et al.'s Case Brief:

- The moniker for Jiangyang and its affiliates set up by the Department in the Preliminary Determination, the Jiangyang Group, is not a distinct legal entity and the Department's draft cash deposit instructions do not list the Jiangyang Group companies by name.
- The Department should clarify in the final determination and accompanying cash deposit instructions that the Jiangyang Group includes Jiangyang and Jiangheng so that importers may declare the proper duty rate with respect to invoices issued by either of these companies.

Department's Position: We agree with the Jiangyang Group that exports made by Jiangyang and Jiangheng of merchandise produced by Jiangyang and Jiangheng are entitled to the same AD cash deposit rate. We note that while the CBP instructions released with the Preliminary Determination listed the Jiangyang Group as a single entity with no explanation as to the constituent members of that group,[435] the Automated Commercial Environment ("ACE"), operated by CBP,[436] contains complete information as to those members in the module pertaining to the Jiangyang Group. Nevertheless, for this final determination we have amended the cash deposit instructions to include the names of the companies that comprise the Jiangyang Group. Further, while the Department has been advised by CBP in the past that the Department may not release images captured from the ACE module to interested parties in AD proceedings, we note that parties who have been granted access to the ACE system, including customs brokers, are able to view the notes section of the module, wherein the names of companies considered to be part of a single entity are also listed.

[434] For details on how we implemented these corrections, see Jiangyang Final Analysis Memo at 3-4.

[435] See Memorandum to the File from Kabir Archuletta, International Trade Analyst, Office 9 "Draft U.S. Customs and Border Protection ('CBP') Cash Deposit Instructions" (April 29, 2013) at Attachment I.

[436] See, e.g., Automated Commercial Environment (ACE): Terms and Conditions for Account Access of the ACE Secure Data Portal, 72 FR 27632 (May 16, 2007).

Comment 15: Sanfortune's Packing Buckles

Sanfortune's Case Brief:

- Sanfortune's packing buckle is a small sheet of metal designed to be crimped around the steel strapping strip and both were purchased as a set from the same vendor.
- Sanfortune reported its steel strip FOP inclusive of the weight of the packing buckle. While the Department did not weigh a packing buckle at verification, it is reasonable to conclude that the weight of the small buckles would not have added appreciably to the weight of the strips, which weighed several kilograms.
- Sanfortune reported its weights conservatively and the verification report notes that weights reported in the FOP database were all higher than observed.[437] The verification report further notes that small variances could be expected based on scale calibration.
- Sanfortune reasonably reported the buckle and steel strip as a single input and the record does not support adding any weight to the FOP database for the packing buckle.
- If the Department finds this buckle is a separate input, it may disregard its valuation because the verification of Jiangyang demonstrated that this item is superfluous to the packing of plywood.
- If the Department decides this input must be valued separately, it could assign as FA a value based on the one percent of the weight of steel strip comprised by the buckle using the value of the steel strip or using a Philippine HTS number submitted by Petitioners.

Department's Position: The Department agrees with Sanfortune that its steel packing buckles need not be valued separately and no adjustment is necessary to Sanfortune's FOP database to account for the steel packing buckles which were not reported separately by Sanfortune. As noted in the Sanfortune Verification Report, verifiers observed that differences between the actual weights of packing materials and the reported weights were all higher than what was reported by Sanfortune.[438] Accordingly, we find that the weights reported by Sanfortune for its steel strip could conceivably have included the weight of the steel packing buckle and, as it is essentially a piece of steel strip and therefore would likely be valued using the same surrogate value, it is not necessary to value the packing buckle separate from the steel strip packing input by adjusting the reported weight of the packing strip input.

Comment 16: Sanfortune's Freight Distances

Sanfortune's Case Brief:

- Because Sanfortune overestimated its supplier distances, the Department should downwardly adjust by 10 percent (the average of total over-reported distance) those distances in the FOP database that were verified.

Department's Position: The purpose of the verification process is to confirm the accuracy and completeness of submitted factual information.[439] Prior to verification, Sanfortune had reported supplier distances to the Department. During verification, the Department noted that the verified supplier distances were different than those previously reported.[440] Sanfortune officials

[437] See Sanfortune Verification Report at 22.
[438] See id.
[439] See 19 CFR 351.307(d).
[440] See Sanfortune Verification Report at 21.

explained that the previously reported distances were based on an estimate, and that they had overestimated the distances.[441] However, we note that Sanfortune had at its disposal the information necessary to calculate and report exact distances.[442] Further, as we only found out at verification that Sanfortune had reported incorrect freight distances, it would be inappropriate at this time to allow Sanfortune to supplement its prior responses with a further estimate which is based on a limited number of verified distances. Therefore, we are not adjusting Sanfortune's supplier distances as requested for the final determination.

Comment 17: Correction of Sanfortune's Company Name for the Final Determination

Sanfortune's Case Brief:

- In preparation of its case brief, Sanfortune became aware that its submissions have referred to the company as both "San Fortune" and "Sanfortune."
- Sanfortune requests that the Department refer to the company in the final determination, order and customs messages by including "Sanfortune" as one word.

Department's Position: A review of the record evidence confirms that Sanfortune's name has been presented as both "Linyi San Fortune Wood Co., Ltd.," and "Linyi Sanfortune Wood Co., Ltd."[443] While Sanfortune's translated, English-language business license states that the company's name is "San Fortune,"[444] sales documentation submitted in the original English-language format all refer to the company as "Sanfortune."[445] Therefore, the Department finds it appropriate to use the following name as we determine that it is the name under which the company conducts operations in the normal course of business: Linyi Sanfortune Wood Co., Ltd. ("Sanfortune"), and going forward we will use this name in the final determination and instructions to CBP.

Comment 18: Translation of Pizhou Hengxing's Supplier's Name

Jiangsu Dilun et al's Case Brief:

- Pizhou Hengxing International Trade Co. Ltd. ("Pizhou Hengxing") inadvertently mistranslated the name of its supplier in its submission of producer-exporter combinations which was used as the basis for assigning separate rates in the Preliminary Determination.
- Pizhou Hengxing's supplier's name was submitted as Xuzhou Fuyuan Timber Co., Ltd. rather than the correct translation which is Xuzhou Fuyuan Wood Co., Ltd. Pizhou Hengxing requests that the Department accept its correction of its supplier name for the final determination.

Department's Position: A review of the record evidence confirms that Pizhou Hengxing submitted its supplier's name as Xuzhou Fuyuan Timber Co., Ltd. (Fuyuan) in its separate rate application and in the Excel submission of its requested producer/exporter combination rates. However, Pizhou Hengxing has explained that it inadvertently mistranslated the name of its

[441] See id.
[442] See Sanfortune Verification Report at 21 and Exhibit 38.
[443] See, e.g., Letter from Sanfortune to the Secretary of Commerce "Section A Questionnaire Response" (December 28, 2012) ("Sanfortune SAQR") cover letter at 1 and Section A Response at 1.
[444] See Sanfortune SAQR at Exhibit A-2.1.
[445] See, e.g., Sanfortune SAQR at Exhibit A-1.

supplier. As there is no documentation or other evidence on the record of this investigation to contradict Pizhou Hengxing's claim that its supplier's name was mistranslated, and as no other interested parties contested Pizhou Hengxing's claim, the Department finds it appropriate to accept Pizhou Hengxing's corrected supplier name, and accordingly will revise Pizhou Hengxing's producer/exporter combination rate for the final determination.

Comment 19: Removal of Double Bracketed Information from the Record

Mandatory Respondents' Case and Rebuttal Briefs:

- Mandatory Respondents argued in their case and rebuttal briefs that Petitioners failed to provide adequate justification for withholding certain double-bracketed information in Petitioners' June 17 and June 27, 2013, surrogate value submissions from release under Administrative Protective Order ("APO").

Department's Position: On July 23, 2013, the Department issued a memorandum regarding Mandatory Respondents' comments and Petitioners' submitted information and justification.[446] The Department determined to accept Petitioners' claim to withhold double-bracketed information from disclosure under APO because Petitioners provided sufficient support for their claim that their market researcher could be at risk both physically and professionally as a result of the person's identity being revealed.[447] The Department continues to find that the information submitted by Petitioners should remain on the record as submitted.

Comment 20: Whether to Grant Certain Companies Separate Rates

Liberty Woods et al's Case Brief:

- The Department mistakenly characterized Cosco Star International Co., Ltd. ("Cosco Star") and Green Link International Corp. ("Green Link") as third country resellers because they are headquartered in market-economy countries. However, both Cosco Star and Green Link are market-economy owned companies in the PRC which exported merchandise from the PRC that was entered into the United States during the POI.
- Cosco Star and Green Link are not "third country middlemen" but rather Chinese exporters who happen to have headquarters in market economy countries (St. Vincent & the Grenadines and Samoa, respectively). It would be incorrect to assign the dumping margin of another Chinese exporter to these companies because they are the exporters out of the PRC.
- Whether Cosco Star and Green Link's suppliers had knowledge that the merchandise was destined for the United States is irrelevant because the Department assigns separate rates based on the entity that exports out of the PRC, so whether an upstream supplier knew the destination of the goods does not factor into the decision.

Department's Position: In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are essentially operating units of a single, government-wide entity and, thus, should receive a single antidumping duty

[446] See Memorandum to James Doyle, Director, Office 9, from Evangeline Keenan, Director, APO/Dockets Unit, "Hardwood and Decorative Plywood from the People's Republic of China: Clear and Compelling Need to Withhold Business Proprietary Information from Disclosure Under Administrative Protective Order" (July 23, 2013). This memorandum is incorporated herein by reference.
[447] See id. at 3.

rate (i.e., an NME-wide rate).[448] In situations where the NME respondent is owned wholly by entities located in market-economy countries, a separate rate analysis is not necessary to determine whether its export activities are independent.[449] Additionally, in order for an exporter to be considered as a respondent, it must demonstrate eligibility for separate-rate status by satisfying our separate-rate test. By doing so, the entity can obtain its own individual rate.[450]

In this case, sales documentation provided by both Cosco Star and Green Link, including commercial invoices, supports their claims that they were the exporters of the merchandise under consideration from the PRC, and that they are registered in market economy countries. Both Cosco Star and Green Link made their export sales directly to U.S. customers; their headquarters companies were not involved in the transactions. Therefore, they are eligible for separate rates, as they are the exporters of the merchandise under consideration from the PRC to the United States during the POI, and they are wholly owned by market economy companies. Therefore, in accordance with our practice, as explained above, we are assigning both Cosco Star and Green Link separate rate status for the final determination. Further, two additional companies, G.D. Enterprise Ltd. and Smart Gift International, submitted timely separate rate applications, but did not receive separate rates for the Preliminary Determination. Although no parties submitted comments on the separate rate status of these two companies in case and rebuttal briefs, both companies have demonstrated that they exported the merchandise under consideration from the PRC to the United States during the POI, and are owned by companies in market economy countries. Therefore, we find that they have met the requirements for separate rate status for this final determination.

RECOMMENDATION

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

AGREE ✓ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

16 SEPTEMBER 2017
Date

[448] See, e.g., Diamond Sawblades LTFV; Lined Paper LTFV.
[449] See e.g., Final Determinations of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China, 60 FR 22359, 22361 (May 5, 1995); Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19027 (April 30, 1996); Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan, 66 FR 50397, 50399 (October 3, 2001), and accompanying Issues and Decision Memorandum.
[450] See PRC OCTG Investigation.

APPENDIX I

Companies Receiving a Separate Rate

1 Anhui Tiansen Trading Co., Ltd.
2 Anhui Wanmu Wood Co., Ltd.
3 Anhui Xinyuanda Wood Co., Ltd.
4 Anji Hefeng Bamboo & Wood Industry Co., Ltd.
5 Anji Qichen Bamboo Industry Co., Ltd.
6 Bergey (Tianjin) International Co., Ltd.
7 Celtic Co., Ltd
8 Cosco Star International Co., Ltd.
9 Dehua Tb Industry & Trade Company Limited
10 Deqing Dajiang Import And Export Co., Ltd.
11 Fengxian Fangyuan Wood Co., Ltd.
12 G.D. Enterprise Limited
13 Green Link International Corp.
14 Guangxi Guixun Panel Co.
15 Highland Industries Inc.
16 Huainan Mengping Import And Export Co., Ltd
17 Jiangsu Dilun International Trading Co., Ltd.
18 Jiangsu Eastern Shengxin International Trading Co., Ltd.
19 Jiangsu Happy Wood Industrial Group Co., Ltd.
20 Jiangsu Shengyang Industrial Joint Stock Co., Ltd.
21 Jiangsu Simba Flooring Co., Ltd.
22 Jiangsu Top Point International Co., Ltd.
23 Jiangsu Vermont Wood Products Co., Ltd
24 Jiashan Dalin Wood Industry Co., Ltd.
25 Jiaxing Brilliant Import & Export Co., Ltd
26 Jiaxing Gsun Imp. & Exp. Co., Ltd
27 Jiaxing Hengtong Wood Co., Ltd
28 Jiaxing Kaochuan Woodwork Co.,Ltd
29 Joc Yuantai International Trading Co., Ltd.
30 Langfang Baomujie Wood Co., Ltd.
31 Larkcop International Co., Ltd.,
32 Leadwood Industrial Corp.
33 Lianyungang Penghai International Trading Co., Ltd.
34 Lianyungang Yuantai International Trade Co., Ltd.
35 Lingyi Huasheng Yongbin Wood Co., Ltd.
36 Linyi Anshun Timber Co., Ltd.
37 Linyi City Dongfang Jinxin Economic & Trade Co., Ltd.
38 Linyi Dahua Wood Co., Ltd.
39 Linyi Dongfangjuxin Wood Co., Ltd.
40 Linyi Evergreen Wood Co., Ltd.
41 Linyi Glary Plywood Co., Ltd.

42 Linyi Hengsheng Wood Industry Co., Ltd.
43 Linyi Huifeng Wood Industry Co., Ltd
44 Linyi Jiahe Wood Industry Co., Ltd.
45 Linyi Kaier International Trade Co., Ltd.
46 Linyi King Import And Export Co., Ltd
47 Linyi Linhai Wood Co., Ltd.
48 Linyi Mingzhu Wood Co., Ltd
49 Linyi Tianhe Wooden Industry Co., Ltd.
50 Linyi Zhongtai Import And Export Co., Ltd.
51 Pacific Plywood Co., Ltd.
52 Pingyi Jinniu Wood Co., Ltd.
53 Pizhou Hengxing International Trade Co., Ltd.
54 Qingdao King Sports Products Technology Co., Ltd
55 Qingdao Top P&Q International Corp.
56 Qufu Luhan Woodwork Co., Ltd
57 Qufu Shengfu Wood Work Co., Ltd.
58 Shandong Anxin Timber Co., Ltd.
59 Shandong Jinli Imp.&Exp. Co., Ltd.
60 Shandong Qishan International Trading Co., Ltd.
61 Shandong Union Wood Co., Ltd.
62 Shandong Xingang Group
63 Shangdong Huaxin Jiasheng Wood Co.,Ltd.
64 Shanghai Aviation Import & Export Co., Ltd.
65 Shanghai Futuwood Trading Co., Ltd.
66 Shanghai Luli Trading Co., Ltd.
67 Shanghai Mailin International Trade Co., Ltd.
68 Shanghai S&M Trade Co., Ltd.
69 Shanghai Senda Fancywood Industry Co.
70 Shouguang Sanyang Wood Industry Co., Ltd.
71 Siyang Enika International Trade Co., Ltd.
72 Smart Gift International
73 Sumec International Technology Co., Ltd
74 Suqian Foreign Trade Co., Ltd.
75 Suqian Hopeway International Trade Co., Ltd
76 Suzhou Dongda Wood Co., Ltd.
77 Suzhou Fengshuwan Import And Export Trade Co., Ltd
78 Suzhou Oriental Dragon Import And Export Corp. Ltd.
79 Wenzhou Eita Import & Export Co., Ltd.
80 Xuzhou Antop International Trade Co., Ltd.
81 Xuzhou Baoqi Wood Product Co., Ltd.
82 Xuzhou Chengxin Wood Co., Ltd.
83 Xuzhou Ekea International Trade Co., Ltd
84 Xuzhou Hansun Import & Export Co., Ltd
85 Xuzhou Hongda Wood Co., Ltd
86 Xuzhou Pengyu Wood Products Co., Ltd.

87 Xuzhou Pinlin International Trade Co., Ltd.
88 Xuzhou Runjin Import & Export Trade Co., Ltd.
89 Xuzhou Sanli Wood Co., Ltd.
90 Xuzhou Shenghe Wood Co., Ltd.
91 Xuzhou Shengping Import & Export Co., Ltd.
92 Xuzhou Sincere Wood Co., Ltd.
93 Xuzhou Tianshan Wood Co., Ltd
94 Xuzhou Timber International Trade Co., Ltd.
95 Xuzhou Weilin Wood Co., Ltd.
96 Xuzhou Zhongda Building Materials Co., Ltd.
97 Yijiang Wood Products (Kunshan) Co., Ltd.
98 Yinhe Machinery Chemical Limited Company Of Shandong Province
99 Yishui Hongtai Wood-Made Co., Ltd
100 Yutai Zezhong Wood Co., Ltd.
101 Zhejiang Anji Tiancheng Flooring Co., Ltd.
102 Zhejiang Dehua Tb Import & Export Co., Ltd
103 Zhejiang Shenghua Yunfeng Import & Export Co., Ltd.
104 Zhejiang Xinyuan Bamboo Products Co., Ltd.
105 Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd.