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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2011-2012 Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China

SUMMARY:
We analyzed the case briefs, and rebuttal briefs, submitted by interested parties in the antidumping duty administrative review of multilayered wood flooring from the People's Republic of China. As a result of our analysis, we made changes to the margin calculations for Armstrong Wood Products (Kunshan) Co., Ltd., Fine Furniture (Shanghai) Limited and Nanjing Minglin Wooden Industry Co. Ltd.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a discussion of the issues, followed by tables of shortened citations and litigation cases.

Background:

On November 25, 2013, the Department published its *Preliminary Results*. On January 13, 2014, the Department received case briefs from Armstrong, Fine Furniture, Minglin and Chinafloors Timber (China) Co., Ltd. On January 14, 2014, the Department received a case brief from the Coalition for American Hardwood Parity ("CAHP").[1] On January 22, 2014, the Department received rebuttal briefs from Armstrong, CAHP, Fine Furniture and Minglin. Between December 16, 2013 and December 23, 2013, the Department received requests for a hearing from Fine Furniture, CAHP and Armstrong. All parties withdrew their requests for a hearing between February 12, 2014 and February 19, 2014. On March 14, 2014, we extended the time period for issuing the final results of this review by 30 days, until April 24, 2014. On April 23, 2014, we extended the time period for issuing the final results of this review by a further seven days, until May 1, 2014.

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[1] The Coalition for American Hardwood Parity consists of the following domestic producers of the like product: Anderson Hardwood Floors, LLC, From the Forest, Howell Hardwood Flooring, Mannington Mills, Inc., Nydree Flooring, and Shaw Industries Group, Inc.

Scope of the Order:

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s). Veneer is referred to as a ply when assembled in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, "engineered wood flooring" or "plywood flooring." Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard ("HDF"), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (e.g., circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the HTSUS: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135;

4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.[2]

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

List of Abbreviations and Acronyms

Acronym/Abbreviation	Full Name
A-to-A	Average-to-Average
A-to-T	Average-to-Transaction
Act	Tariff Act of 1930, as amended
APA	Administrative Procedures Act
Armstrong	Armstrong Wood Products (Kunshan) Co., Ltd.
AUV	Average Unit Value
AWI	Armstrong World Industries
B&H	Brokerage and Handling
CAFC	Court of Appeals for the Federal Circuit
CAHP	The Coalition for American Hardwood Parity
CBP	Customs and Border Protection
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIT	Court of International Trade
CONNUM	Control Number
CTAP	Confederation of Truckers Association, Inc.
Descartes	Descartes Carrier Rate Retrieval Database
Department	Department of Commerce
EP	Export Price
Final SV Memo	Multilayered Wood Flooring from the People's Republic of China: Final Surrogate Value Memorandum
Fine Furniture	Fine Furniture (Shanghai) Limited

[2] On August 28, 2013, in consultation with CBP, the Department added the following HTSUS classification to the AD/CVD module for wood flooring: 9801.00.2500. *See* Letter to the File from Lilit Astvatsatrian, Case Analyst, Enforcement and Compliance, Office IV, regarding "Multilayered Wood Flooring from the PRC, Modification of the Case Reference File in ACE" (November 18, 2013).

FOP(s)	Factor(s) of production
GOC	Government of China
GTA	Global Trade Atlas
HTS	Harmonized Tariff Schedule
IDM	Issues and Decision Memorandum
ILO	International Labor Organization
INA	Immigration and Nationality Act
ITC	U.S. International Trade Commission
Kg	kilogram
Km	kilometer
Layo Wood	Zhejiang Layo Wood Industry Co., Ltd.
ME	Market economy
MEPs	Market economy purchases
Minglin	Nanjing Minglin Wooden Industry Co. Ltd.
MT	Metric ton
NME	Non market economy
NCNT	Non-Coniferous Non-Tropical
NV	Normal value
Patriot	Patriot Flooring Supply, Inc.
POR	Period of Review
PRC	People's Republic of China
Prelim Decision Memo	Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China
Prelim SV Memo	Surrogate Value Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China
Q&V	Quantity and Value
SAA	Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
SG&A	Selling, general and administrative expenses
SICEX	Sistema Integrado de Comercio Exterior
SRA	Separate rate application
SV	Surrogate Value
URAA	Uruguay Round Agreements Act
USTR	United States Trade Representative
VAT	Value Added Tax
WTO	World Trade Organization

DISCUSSION OF THE ISSUES

General Issues

Comment 1: Differential Pricing

1.A Consideration of an Alternative Comparison Method in Administrative Reviews

Fine Furniture:

- Congress has not given the Department the authority to conduct a differential pricing analysis during an administrative review.
- The statutory provision that allows the Department to conduct differential pricing analyses, section 777A(d)(1)(B) of the Act, applies only to investigations; the section pertaining to reviews, section 777A(d)(2) of the Act, contains no similar provision.

Armstrong:

- The statutory authority, section 777A(d)(1)(B), "to conduct a differential pricing analysis" or "for addressing targeted dumping" is limited to original investigations.
- It is clear that Congress did not intend for the Department to apply a targeted dumping or differential pricing analysis in administrative reviews.

Department's Position: We do not agree with respondents' assertion that the Department has no authority to consider the application of an alternative comparison method based on the A-to-T method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." By definition, a "dumping margin" requires a comparison of normal value and export price or constructed export price. Before making the comparison required, it is necessary to determine how to make the comparison.

Respondents maintain that Congress made no provision in section 777A(d)(2) of the Act for the Department to apply the A-to-T method in administrative reviews. Specifically, the respondents argue that because Congress only conferred power upon the Department to consider an alternative comparison method (*i.e.*, "conduct differential pricing analyses") in investigations, the Department cannot consider an alternative comparison method in this or any other administrative review. According to the respondents, "{W}here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion," citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).[3] Fine Furniture also argues that "{T}he Supreme Court has noted that 'an agency literally has no power to act . . . unless and until Congress confers power upon it' . . . ," citing *FAG Italia S.p.A. v. United States*, 291 F.3d 806, 816 (Fed. Cir. 2002) (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

[3] Armstrong also cites *Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80, 126 S. Ct. 2749, 165 L. Ed. 2d 723 (2006) ("Congress' rejection of the very language that would have achieved the result the Government urges here weighs heavily against the Government's interpretation.").

Regarding the respondents' argument, we note that *INS v. Cardoza-Fonseca* considered different sections of the Immigration and Nationality Act, in which the same Congress simultaneously drafted a new standard for one section, and amended another section in which it left the old standard intact. The Supreme Court found that the contrast between the language used in the two standards indicated that Congress intended the two standards to differ.[4] The Supreme Court also explained that the legislative history demonstrated the congressional intent that different standards applied between the two sections of the INA. Such is not the case with respect to section 777A of the Act.

Interested parties argue that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. Interested parties also state that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d) of the Act. Indeed, section 777A(d)(1) of the Act applies to "Investigations" and section 777A(d)(2) of the Act applies to "Reviews." Section 777A(d)(l) of the Act discusses, for investigations, the standard comparison methods (*i.e.,* A-to-A and T-to-T) and then provides for an alternative comparison method (*i.e.,* A-to-T) that is an exception to the standard methods when certain criteria are met. Section 777A(d)(2) of the Act discusses, for reviews, the maximum length of time over which the Department may calculate weighted-average NV in administrative reviews when using the A-to-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews. Thus, according to the interested parties' logic, the statute makes no provision for comparison methods in administrative reviews at all. Such a conclusion would infer that Congress did not give the Department the authority to use a comparison method at all in administrative reviews, with the results that Department would not be permitted to make a comparison of NVs and EPs or CEPs in order to calculate a dumping margin as described in section 771(35)(A) of the Act.

We find that, contrary to the respondents' claim, the silence of the statute with regard to application of the A-to-T comparison method in administrative reviews does not preclude the Department from applying such a practice in administrative reviews. Indeed, the CAFC stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."[5] Further, the court stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions {s }o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."[6]

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews. With the implementation of the URAA, the Department promulgated the final rule in 1997, in which 19

[4] See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).
[5] *See United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010).
[6] *See Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), *citing US. Steel Group v. United States,* 96 F.3d 1352, 1362 (Fed. Cir. 1996).

CFR 351.414(c)(2) stated that the Department would normally use the A-to-T comparison method in administrative reviews. In 2010, the Department published its *Proposed Modification for Reviews*[7] pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several WTO Dispute Settlement Body panel reports which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(l)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(l)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published the *Final Modification for Reviews*.[8] These revisions were effective for all preliminary results of review issued after April 16, 2012, as is the situation for this administrative review.

The Department's regulations at 19 CFR 351.414 (b) (2012) describes the methods by which NV can be compared to EP and CEP in antidumping investigations and administrative reviews (*i.e.*, A-to-A, T-to-T, and A-to-T). These comparison methods are distinct from each other. When using T-to-T or A-to-T comparisons, a comparison is made for each export transaction to the United States. When using A-to-A comparisons, a comparison is made for each group of comparable export transactions for which the EPs, or CEPs, have been averaged together (*i.e.*, for an averaging group). The Department does not interpret the Act or the SAA to prohibit the use of the A-to-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-to-T comparison method in administrative reviews; 19 CFR 351.414(c)(l) (2012) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews.

In particular, the Department determined that in both less-than-fair-value investigations and administrative reviews, the A-to-A method will be used unless the Department determines another method is appropriate in a particular case. The Department further disagrees with the respondents' contention that section 751 (a)(2)(A) of the Act precludes the use of the A-to-T comparison method in administrative reviews. Section 777A(d) of the Act provides for three distinct comparison methods by which dumping margins may be calculated. Section 751(a)(2) of the Act, in contrast, makes no reference to a specific comparison method to be used in administrative reviews. Accordingly, the Department considers that any of the three comparison methods satisfies the requirements of section 751(a)(2) of the Act. Moreover, section 751(a)(2) of the Act makes no reference to either the weighted-average dumping margin or the importer-specific antidumping duty assessment rate. These particular results of review are not specifically mandated by section 751(a)(2) of the Act, but instead are features of the Department's longstanding practice in administrative reviews. Both the weighted-average dumping margin and the importer-specific antidumping duty assessment rate are the result of aggregating the

[7] *See Proposed Modification for Reviews*.
[8] *See Final Modification for Reviews*.

comparison results obtained using one of the three comparison methods. While the calculation of these results depends on transaction-specific data, and these results are the basis for establishing cash deposit requirements at the time of entry and antidumping duty assessments at the time of liquidation, they do not involve entry-by-entry comparisons of NV with EP or CEP. The courts affirmed these features of the Department's practice, confirming that section 751(a)(2) does not mandate an entry-by-entry determination of dumping and antidumping duties.[9]

The Department finds that its actions, as discussed above, represent a logical, reasonable and deliberative method to fill the silence in the Act with regard to administrative reviews.

1.B Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations

Interested Parties:

- The Department did not properly withdraw the regulations governing targeted dumping and is not authorized to apply the alternative methodology because the Department withdrew regulation 19 CFR 351.414(f) (2007) without the necessary notice and comment, and hence, the regulation still has the force of law.

Department's Position: The Department disagrees with respondents' claim that 19 CFR 351.414 (2007)[10] remains in effect, thereby limiting the application of the A-to-T comparison method. The *2008 Withdrawal* involved a regulation which only applied in less-than-fair-value investigations and not in administrative reviews. Likewise, the *Gold East Paper* judicial proceeding involves a less-than-fair-value investigation and not a review. Additionally, the litigation involved in *Gold East Paper* is not final. Furthermore, as explained above, the Department's promulgation of a revised regulation, 19 CFR 351.414, specifically dealt with filling the gap in the statutory language regarding the selection of an appropriate comparison method in the context of administrative reviews. This process was done with proper notice and opportunity to comment, and no party could reasonably have been left with the impression that the Department would be bound by the withdrawn targeted dumping regulations in administrative reviews.

The targeted dumping regulation was properly withdrawn pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulations 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

[9] *See, e.g., Timken Co. v. United States,* 354 F.3d 1334, 1341-42 (Fed. Cir 2004), *cert. denied* 543 U.S. 976 (November I, 2004); and *Corus Staal BVv. DOC,* 395 F.3d 1343, 1347 (Fed. Cir 2005), *cert. denied*, 126 S.Ct.1023 (January 9, 2006).

[10] The Department notes that *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008) ("*2008 Withdrawal*") only applied to 19 CFR 35l.414(d)(5), 351.414(f), 351.414(g).

comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(l)(B) of the Act.[11] 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. Various parties submitted comments in response to the Department's request.[12] After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.[13] Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."[14] Several of the submissions[15] received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be adopted.[16] Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.[17]

These comments suggested that the regulation was impeding the development of an effective remedy for masked dumping. Indeed, after considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."[18] For this reason, the Department determined that the regulation had to be withdrawn.[19] Although this withdrawal was effective immediately, the Department again invited parties to submit comments, and gave them a full 30 days to do so.[20] The comment period ended on January *9*, 2009, with several parties submitting comments.[21]

The course of the Department's decision-making demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice-and comment requirement.[22] Moreover, various courts have rejected the idea that an agency must

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[11] *See Targeted Dumping*.
[12] *See Public Comments Received December 10, 2007,* Department of Commerce, http://enforcement.trade.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html (December 10, 2007) (listing the entities that commented).
[13] *See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations,* 73 FR 26371, 26372 (May 9, 2008).
[14] *See id.*
[15] The public comments received June 23, 2008 and submitted on behalf of several domestic parties can be accessed at: http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html.
[16] *See, e.g.,* "Comments on Targeted Dumping Methodology, Comments," (Interested Party Comments) dated June 23, 2008, at 2.
[17] *See, e.g.,* letter from Committee to Support U.S. Trade Laws, to the Department: "Comments on Targeted Dumping Methodology" at 25; *see also* Interested Party Comments at 29.
[18] *See 2008 Withdrawal.*
[19] *See id.*
[20] *See id.*
[21] *See Public Comments Received January 23, 2009,* Department of Commerce, (Jan. 23, 2009).
[22] *See, e.g., Arizona* (holding that the EPA's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

give the parties an opportunity to comment before every step of regulatory development.[23] Rather, where the public is given the opportunity to comment meaningfully consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether the agency, as a whole, acted in a way that is consistent with the statute's purpose.[24] Here, similar to the agency in *Mineta,* the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in *Mineta,* the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in *Mineta* found all of those facts to indicate that the agency's actions were consistent with the APA, so too the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.[25] Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."[26] The CAFC recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide; in *National Customs Brokers,* the CAFC rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment.[27] Moreover, although the U.S. Customs Service solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering those regulations.[28] The U.S. Customs Service explained that "good cause" existed to comply with the APA's usual notice and comment requirements because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."[29] The court recognized that this explanation was a proper invocation of the "good cause" exception and explained that soliciting and considering comments was *both* unnecessary (because Congress had passed a statute that superseded the regulation) "*and* contrary to the public interest because the

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[23] *See Mineta* (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).
[24] *See id.*
[25] *See, e.g., First Am.*
[26] *See* 5 USC 553(b)(B).
[27] *See, e.g., National Customs Brokers.*
[28] *See id.,* at 1220-21.
[29] *See id.,* 59 F.3d at 1223.

public would benefit from the amended regulations."[30] For this reason, the court affirmed the regulation against the plaintiff's challenge.[31]

In short, the regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to consider whether the A-to-A method is the appropriate tool with which to measure each respondent's amount of dumping. Such effect would have been contrary to congressional intent. Notwithstanding that we satisfied the APA's requirements as discussed above, the Department's revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the "public interest" exception because good cause existed to waive the notice and comment period. Accordingly, there was no basis for the Department to base its analysis in the instant proceeding upon the withdrawn regulation.

1.C Differential Pricing Analysis

Fine Furniture:

- The Department must consider the results of its Cohen's *d* test for purchasers, regions and time periods separately and not on an aggregate basis because the section 777A(d)(1)(B)(i) states "purchasers, regions, *or* periods of time." When the Department considers each analysis separately, each of the results of the Cohen's *d* test by purchaser, region and time period fail to meet the 33 percent minimum threshold to consider using the A-to-T method. Fine Furniture cites to *Chang Chun* to support its argument where the court said that the "first statutory requirement is for {the Department} to find targeted dumping in at least one of three ways: to a customer, in a region or during a period of time."
- The Department must consider factors besides targeting which explain the existence of price differentials.
- The Department must exclude sales that are not dumped from the results in the ratio test (*i.e.*, from sales that pass the Cohen's *d* test).
- Even if non-dumped sales which passed the Cohen's *d* test are included in the ratio test, the A-to-A method can adequately account for any differences in pricing given the small percentage of Fine Furniture's sales that passed the Department's Cohen's *d* test and were found to be sold at less than fair value.

Department's Position: As an initial matter, we note that Fine Furniture's arguments have no grounding in the language of the statute. Fine Furniture does not argue that the Department's reliance on the Cohen's *d* test violates the statutory language. Rather, Fine Furniture puts forth several reasons why it believes the Department should modify its approach from the preliminary results. However, there is nothing in the statute that mandates *how* the Department measures whether there is a pattern of EPs or CEPs that differs significantly. On the contrary, carrying out the purpose of the statute here is a gap filling exercise by the Department. As explained in the *Preliminary Results* and elsewhere in this memorandum, the Department's 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.

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[30] *See id.*, at 1224 (emphasis).
[31] *See id.*

We disagree with Fine Furniture that the Department should consider the results of the Cohen's *d* test by purchaser, by region, and by time period separately from one another. The Department considered all information on the record of this review in its analysis and drew reasonable inferences as to what that data show. Under the Cohen's *d* test and ratio tests, the Department considers the pricing behavior of the producer or exporter in the U.S. market as a whole. The Department does not find the results of the Cohen's *d* test by purchaser, region or time period to be analogous to an aggregation of "apples and oranges" but rather to be different aspects of a single pricing behavior of the producer or exporter. This analysis, based on the Cohen's *d* and ratio tests, informs the Department as to whether there exists a pattern of prices that differ significantly for the producer or exporter as a whole. There is no provision in the statute requiring the Department to determine the existence of a pattern of prices that differ significantly by selecting only one of either purchaser, region or time period. Likewise, the results of the differential pricing analysis, including both criteria provided in the statute, will determine whether the A-to-A method is the appropriate comparison method with which the Department calculates a single weighted-average dumping margin for the producer or exporter.

Fine Furniture is confusing the results of examining individual test groups within the Cohen's *d* test with the aggregation of these individual results within the ratio test to determine whether there exists a pattern of prices that differ significantly. As described in the Preliminary Decision Memorandum, the Cohen's *d* test evaluates whether sales of comparable merchandise to a particular purchaser, region or time period exhibit prices that are significantly different from sales to all other purchasers, regions or time periods, respectively. The comparison results are then aggregated for the producer or exporter as a whole to determine whether there exists a pattern of prices that differ significantly for that producer or exporter. If such a pattern is found to exist, then the Department will examine whether the standard A-to-A method can account for such differences. The purpose of this analysis is to determine whether the A-to-A method is an appropriate tool with which to measure the respondent's amount of dumping. The Department undertakes a similar process when measuring this amount of dumping. Specifically, the Department makes comparisons between NVs and EPs or CEPs for comparable merchandise, and then aggregates these comparison results to determine the amount of dumping for that respondent as a whole. Therefore, the Department continues to find that its use of the Cohen's *d* and ratio tests in the preliminary results is consistent with the statute and is a reasonable execution of its mandate to calculate the weighted-average dumping margin for Fine Furniture.

Whether using the targeted dumping or differential pricing analysis, a finding "in at least one of three ways"[32] is sufficient to satisfy the requirement under section 777A(d)(1)(B)(i) of the Act. The Department disagrees with Fine Furniture's claim that the word "or" in the statute requires the Department to consider the results of the Cohen's *d* (or the *Nails*) test separately by purchaser, region and time period. To the contrary, the Department agrees that the court's statement, with the further recognition that any analysis done must be based on comparisons "among purchasers, regions or periods of time." To make a comparison of the sale prices to a particular purchaser with sale prices of comparable merchandise to other regions would be nonsensical. Accordingly, the Department finds that Fine Furniture's reference to *Chang Chun* is unpersuasive, and continues to find that its aggregation of the "value of sales to purchasers,

[32] *See Chang Chun* at 1375.

regions, and time periods that pass the Cohen's *d* test" in the ratio test in the preliminary results is reasonable when evaluating whether there exists a pattern of prices that differ significantly.

As a general matter, the Department also disagrees with Fine Furniture that it must account for some kind of causality for any observed price differences. According to Fine Furniture, the standard method appropriately accounts for differences in Fine Furniture's prices because these differences are due to justifiable commercial concerns, not targeted dumping or other price discrimination. Fine Furniture claims that the purported purpose of the Department's differential pricing analysis is not accomplished here. Fine Furniture suggests that because its product codes contain more detail than the CONNUM codes used by the Department to discover so-called differential pricing, it is possible that product differences not accounted for at the CONNUM level explain the differential pricing. No such requirement exists in the statute. Congress did not speak to the intent of the producers or exporters in setting prices that exhibit a pattern of significant price differences. Consistent with the statute and the SAA, the Department determined whether a pattern of significant price differences exists. Neither the statute nor the SAA requires the Department to conduct an additional analysis as argued by Fine Furniture to account for potential reasons that the observed price differences exist.

Pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the purpose of the differential pricing analysis applied in the *Preliminary Results* is to determine whether the A-to-A method is an appropriate tool with which to measure the amount of dumping by Fine Furniture. When the Department measures the amount of Fine Furniture's dumping in the United States, it calculates dumping margins and an overall weighted-average dumping margin for Fine Furniture pursuant to section 771(35) of the Act. To calculate dumping margins, the Department makes a "fair comparison … between the export price or constructed export price and normal value" pursuant to section 773(a) of the Act. When the Department makes such comparisons, they are made for comparable merchandise which is defined by the CONNUMs established by Department on a proceeding-by-proceeding basis. These CONNUMs include all of the commercially meaningful physical characteristics of the merchandise under consideration.

Likewise, when the Department is determining whether the A-to-A method is appropriate pursuant to 19 CFR 351.414(c)(1) in this administrative review, it based this analysis on a differential pricing analysis which includes the Cohen's *d* test. The Cohen's *d* test measures "the extent of the difference between the mean of a test group and the mean of a comparison group."[33] When making such comparisons, the Department must also ensure that these comparisons are fair in order to conduct a reasonable analysis. To this end, these comparisons "among purchasers, regions or periods of time" are for comparable merchandise defined "using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins."[34] As a result, the CONNUM that is used to calculate the weighted-average dumping margin is the same CONNUM that is used to evaluate whether the A-to-A method used to calculate the weighted-average dumping margin is appropriate.

[33] *See* Prelim Decision Memo at 16.
[34] *See id.*

Fine Furniture contends that the different prices found by the Department may be due to differences in physical characteristics of the subject merchandise that are not represented in the CONNUM. The Department disagrees. The physical characteristics used to create the CONNUM were determined in the original investigation based on comments from interested parties, and no parties have objected to these physical characteristics or in the way in which they have been ranked in terms of importance. Further, as discussed above, the same physical characteristics are used to evaluate whether the A-to-A method is appropriate to calculate Fine Furniture's weighted-average dumping margin as are used to actually calculate Fine Furniture's weighted-average dumping margin. Therefore, the Department finds that Fine Furniture's claim that the CONNUM is not an appropriate basis to make comparisons in the Cohen's d test is meritless.

Further, we disagree with Fine Furniture's claim that the Department must take into account other factors with which prices may allegedly vary. As discussed above, there is no statutory requirement that the Department either identify, or address, underlying factors which may cause a pattern or prices that differ significantly. Fine Furniture's reliance on the quotation from the CIT's opinion in *Borden I*[35] is inapposite. This litigation involved the Department final determination in the less-than-fair-value investigation of *Pasta from Italy*,[36] and involved the Department's rejection of Borden's allegation of targeted dumping. This instant segment is not an investigation but an administrative review, and no allegation of targeted dumping was required of the petitioner in order for the Department to consider an alternative comparison method. In this administrative review, the Department considered this question pursuant to 19 CFR 351.414(c)(1).

Fine Furniture argues that the results of the Cohen's *d* test, simply on its face, are unreasonable. Fine Furniture claims that most of its sales that passed the Cohen's *d* test were not dumped. Fine Furniture maintains that the results of the Department's analysis are unreasonable given that such a relatively small percentage of their respective sales that passed the Cohen's *d* test were also found to be sold at less than fair value.

The Department disagrees. Section 777 A(d)(1)(B)(i) of the Act requires that the Department find a "pattern of export prices (or constructed export prices) for comparable merchandise which differ significantly among purchasers, regions, or periods of time . . . ." This provision, which the Cohen's *d* and ratio tests address, involves an analysis of U.S. prices, and makes no reference to comparisons with NVs. As explained in the *Preliminary Results,* the Cohen's *d* test is the first stage of the differential pricing analysis - the part where the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices in the U.S. market to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The analysis of the impact of a pattern of prices that differ significantly, if one is identified, on dumping and the potential for masked dumping is addressed by section 777 A(d)(l)(B)(ii) of the Act.

[35] Fine Furniture cites *Borden* ("Certainly, not all price variation, not even all statistically significant variation, results from targeted dumping.").
[36] *See Pasta from Italy Final Determination* and *Pasta from Italy Amended Final Determination.*

Respondents argue that sales that were not both targeted and dumped can be addressed using the normal methods of comparison set forth in the statute and the Department's practice using the A-to-A method. As an initial matter, we note that respondents continue to assert that the withdrawn targeted dumping regulations remain in effect. As explained in detail elsewhere, the targeted dumping regulation was properly withdrawn pursuant to the APA, and was only applicable to less-than-fair-value investigation, of which this administrative review is not one.

Notwithstanding the fact that the regulations governing targeted dumping are not applicable to this administrative review, we disagree with Fine Furniture's assertion that sales identified as establishing a pattern of prices that differ significantly must be "both targeted and dumped." The statute creates no such requirement. The statute states that the Department may apply the A-to-T comparison method if "there is a pattern of export prices (or constructed 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 A-to-A comparison method.[37] The first requirement examines a pattern of export prices or constructed export prices, *i.e.*, the prices of transactions in the U.S. market, and makes no provision for comparisons with normal values as is provided for when examining dumping.[38] Therefore, whether U.S. prices are above or below their comparable normal values, *i.e.*, whether they are dumped or not, is not a consideration when examining whether there exists a pattern of prices that differ significantly consistent with section 777A(d)(1)(B)(i) of the Act.

Respondents also appear to make the argument that higher-priced sales cannot be part of a pattern of prices that differ significantly because they cannot be dumped. The Department disagrees. As discussed in the previous paragraph, the examination of whether a pattern exists consists of an analysis of U.S. prices with no comparison with their comparable normal values. Higher-priced sales may be dumped; lower-priced sales may not be dumped; we do not know and the statute does not require that the Department make a finding of dumping when examining whether there exists a pattern of prices that differ significantly.

For these final results, the Department considered all of the U.S. sales information on the record for Fine Furniture in its analysis and to draw reasonable inferences as to what the data show. The purpose of considering an alternative comparison method is to examine whether the A-to-A method is appropriate to measure each respondent's amount of dumping, some of which may be hidden because of masked dumping. Masked dumping is the result of two concurrent situations: dumped sales and non-dumped sales. One, without the other, does not result in masked dumping. The existence of both dumped and non-dumped sales to have the potential for masked dumping, and one must consider both low-priced and high-priced sales with determining whether a pattern of prices that differ significantly exists and whether masking is occurring. When the Department looks for a pattern of prices that differ significantly, a pattern can involve prices that are lower than the comparison price or higher than a comparison price. Lower, higher, or both are all possibilities for establishing a pattern consistent with section 777A(d)(1)(B)(i) of the Act.

Consequently, 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

[37] *See* section 777A(d)(1)(B) of the Act.
[38] *See* section 771(35)(A) of the Act.

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 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.

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 prices that differ significantly because this analysis includes no comparisons with NVs. By considering all sales, higher priced sales and lower priced sales, the Department is able to analyze an exporter's pricing behavior and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differs 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 pricing behavior which creates a pattern, 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.

1.D Denial of Offsets with the Average-to-Transaction Comparison Method

Fine Furniture:

- The Department should allow offsets for any calculation based on average-to-transaction comparisons, as well as for calculations based on average-to-average comparisons.
- The denial of offsets in the A-to-T method would similarly be inconsistent with the United States' international obligations should the Department continue to apply this method for some of Fine Furniture's sales despite the lack of statutory authority.

Department Position: The recent decision by the CAFC in *Union Steel* 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 the denial of offsets for non-dumped sales with respect to the A-to-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-to-A comparison method in investigations.[39] 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.[40] Indeed, the court noted that although the Department recently modified its practice "to allow for offsets when making A-to-A comparisons in administrative reviews . . . {t}his

[39] *See Union Steel* at 1106.
[40] *See id*.

modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."[41]

Likewise, in *US Steel Corp.*, the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-to-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the court recognized that the Department may use zeroing when applying the A-to-T comparison method where patterns of significant price differences are found.[42]

We also disagree with respondents' contention that the court's decision in *Union Steel* is limited to market economy reviews. The respondents argue that the A-to-T method used in market economy reviews differs significantly from the methodology employed in administrative reviews of antidumping duty orders for a non-market economy. While the respondents claim that "the 'average' normal value that is compared to the transaction specific export or constructed export value of the U.S. sale is a monthly average in market-economy reviews, but a yearly value covering the entire period of review in NME reviews,"[43] this is only true where normal value is based on comparison market sale prices; it ignores market economy reviews where normal value is based on constructed value. Therefore, the argument that *Union Steel* only applies to market economy reviews where normal value was based on comparison market sales overlooks the fact that even the review underlying the *Union Steel* decision involved the use of constructed value.[44] Although the Department modified its cost-calculation methodology in that review, the Department's normal practice is to calculate an annual weighted-average cost for the POR.[45]

> Cost of production is calculated according to a statutory formula by adding together several costs and expenses, including the cost of materials, fabrication, containers, coverings, and other processing costs, and selling, general, and administrative expenses. . . . The constructed value of merchandise, which is the basis for normal value when there are insufficient sales in the exporting country or a third country, is the sum of the same costs and expenses used to calculate cost of production, plus realized profits. . . . Under its standard methodology, Commerce determines cost of production by calculating a single weighted-average cost for the period of review.[46]

Although section 777A(d)(2) of the Act states that in reviews, "when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale." Section 777A(e) of the Act discusses the use of constructed value as the basis for normal value, and contains no such limits regarding the time period for production costs used to calculate constructed value as the basis for normal value. In fact, the Department's

[41] *See id.*
[42] *See US Steel Corp.* at 1355 n.2, 1362-63.
[43] *See* Layo Wood case brief at 46.
[44] *See Corrosion-Resistant Carbon Steel Korea.*
[45] *See*, *e.g.*, *Wire Rod Canada* and accompanying IDM at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period).
[46] *See Thai Pineapple.*

practice, as explained above, is to calculate a single, weighted-average CONNUM-specific cost for the period of review. As explained: "We use annual average costs in order to even out swings in production costs experienced by respondents over short periods of time. This way, we smooth out the effect of fluctuating raw material costs."[47]

Likewise, in non-market economy reviews, such as this one, pursuant to section 773(c)(1) of the Act, the Department calculates a single CONNUM-specific weighted-average normal value for the POR in a manner similar to how it calculates constructed value, except that it values the factors of production utilizing, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Notwithstanding respondents' claims to the contrary, the court's decision in *Union Steel* was not restricted to market economy reviews in which normal value was based on comparison market sale prices. Therefore, consistent with the Department's normal practice in reviews involving non-market economy countries, we properly applied the A-to-T method to respondents' sales. Further, in doing so, we properly denied offsets for non-dumped transactions as part of the A-to-T method.

Lastly, the Department disagrees with Fine Furniture's proposition that the denial of offsets with the A-to-T method is inconsistent with the United States' international obligations. First, neither the WTO's Dispute Settlement Body nor the Appellate Body have issued reports regarding the denial of offsets with the application of an alternative comparison method based upon the A-to-T method as described in the second sentence of Article 2.4.2 of the WTO Antidumping Agreement. Furthermore, The Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[48] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[49] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[50] With regard to the denial of offsets when using an alternative comparison method based on the A-to-T method, the Department has issued no new determination or the United States has not adopted any change to its methodology pursuant to this statutory procedure.

1.E Whether to Use the Targeted Dumping Analysis for Armstrong

CAHP:

- The Department should use the targeted dumping analysis, including the *Nails* test, for Armstrong.

[47] *See Wire Rod Canada* and accompanying IDM at Comment 5.
[48] *See Corus Staal*; *accord Corus Staal* 2007; *see also* the SAA at 659 ("WTO dispute settlement panels will not have any power to change U.S. law or order such a change.")
[49] *See, e.g.*, 19 U.S.C. §§ 3533, 3538.
[50] *See, e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

- The Department should then rely upon that test, the results of which more closely align with the pricing patterns found in the U.S. sales data.

Armstrong:

- The Department should reject Petitioner's suggested change from the differential pricing analysis.
- The Department must use the standard A-to-A method in making comparisons of CEP and NV for Armstrong.

Department's Position: According to CAHP, application of the *Nails* test reveals that Armstrong engaged in targeted dumping. As a result, CAHP urges the Department to apply the targeted dumping analysis, including the *Nails* test, to Armstrong, while continuing to apply the differential pricing analysis to the other respondents. Armstrong first argues that because the statute provides for a targeted dumping analysis as an exception to the normal methodology in investigations only, and explicitly fails to provide for this "exception" in administrative reviews, the Department should not apply a targeted dumping analysis to this review. Armstrong also argues that if the Department applies a targeted dumping or differential pricing analysis for the final results, the conclusion of the preliminary results, that Armstrong did not engage in differential pricing, was correct and does not justify the modification requested by Petitioner.

While CAHP acknowledges that the Department unveiled the differential pricing analysis in the investigation of xanthan gum, CAHP claims that the continued use of the targeted dumping analysis in other proceedings supports using the targeted dumping analysis for Armstrong in this review. We disagree. As an initial matter, CAHP does not argue that the Department's reliance on a differential pricing analysis, including the Cohen's *d* test, violates the statutory language, nor can it. Rather, CAHP suggests that the Department modify its approach from the preliminary results, but only with respect to Armstrong. While there is nothing in the statute that mandates *how* the Department measure whether there is a pattern of export prices that differs significantly, as explained in detail above, carrying out the purpose of the statute here is a gap filling exercise by the Department, and the use of the Cohen's *d* test as a component in the differential pricing analysis applied in the preliminary results is in no way contrary to the law. As a matter of fact, given the Department's experience over the last several years, the Department's research, and consideration of the numerous comments and suggestions on determining whether the criteria of section 777A(d)(1)(B) of the Act were being satisfied, the Department developed and implemented a differential pricing analysis for this administrative review.

Armstrong maintains that the Department cannot permit CAHP to "gerrymander its methodology in an obvious attempt to cobble together a set of statistics to justify imposition of the now outdated *Nails* test for Armstrong,"[51] while continuing to apply a differential pricing analysis for the three other respondents. Armstrong makes a valid point stating that CAHP effectively proposes that the Department subject respondents to two types of analysis, by first applying a differential pricing analysis, and then, if the Department finds no pattern of prices that differ significantly, then the respondent would be subjected to a second test based on a targeted

[51] *See* Armstrong's rebuttal brief at 38.

dumping analysis. We also find fault with CAHP's suggestion that if the *Nails* test establishes a pattern of prices that differ significantly while the differential pricing analysis shows none, then the Department should determine which test results seem more reliable. By its own admission, CAHP states that the mere fact of different results between the targeted dumping and differential pricing analyses is not enough for the Department to find a pattern of prices that differ significantly.[52] Nevertheless, CAHP suggests that, given the different results, the Department should rely on the *Nails* test for Armstrong. Presumably, as long as any of the Department's accepted approaches shows a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, CAHP favors applying the alternative A-to-T method to Armstrong's sales. The fact is that the Department has already determined the differential pricing analysis to be reliable and appropriate for this administrative review. As a result, the Department continues to apply its differential pricing analysis for the final results for all respondents.

Comment 2: Financial Statements

Armstrong:

- The Department should use 2012 financial statements from Philippine companies at a similar integration level to the respondents.
- If the Department continues to use Chapter 6A ILO data to value labor, it must reclassify indirect labor, compensation and benefits to avoid double counting.

Fine Furniture:

- The Department should use financial statements from Philippine companies at a similar integration level to the respondents (*i.e.*, companies that slice veneer sheets from purchased logs and lumber).

CAHP:

- The Department should continue to use 2011 financial statements, as they are contemporaneous with the POR.
- Only non-integrated Philippine companies should be used, given that two of the respondents exclusively used purchased veneers, while the other two respondents used a combination of purchased veneers and veneers cut from purchased logs.
- The Department should continue to reject financial statements with evidence of non-interest bearing loans from shareholders.

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."[53] 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

[52] *See* CAHP's case brief at 36.
[53] *See, e.g., Diamond Sawblades LTFV Final* and accompanying IDM at Comment 1.

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.[54] 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**.**[55] Accordingly, when examining the merits of financial statements on the record, the Department does not have an established hierarchy that automatically gives certain 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.[56]

In calculating financial ratios for the preliminary results, the Department considered 18 financial statements of Philippine producers of comparable merchandise (*e.g.*, plywood) placed on the record by interested parties. The Department ultimately used the 2011 financial statements from Smart Plywood Industries, Inc. ("Smart Plywood"); Tagum PPMC Wood Veneer, Inc. ("Tagum"); Philippine Softwoods Products, Inc. ("PSP"); Richmond Plywood Corporation ("RPC"), Charverson Wood Industry Corporation ("Charverson") and Mount Banahaw Industries, Inc. ("Banahaw").[57] Following the publication of the *Preliminary Results*, interested parties placed an additional seven financial statements on the record for consideration: 2010 financial statement from Industrial Plywood Group Corporation ("Industrial Plywood"); 2011 financial statements from Industrial Plywood; Veneering Master WoodPhil Corp ("Veneering Master"); and Pt Tirta Mahakam Resources, Tbk. ("Tirta"); 2012 financial statements from Banahaw; Sirawai Plywood and Lumber Corporation ("Sirawai"); and Smart Plywood.[58] After considering the comments by interested parties in their case and rebuttal briefs, along with the new financial statements placed on the record, the Department modified the financial ratios.

We disagree with respondents that we should only use 2012 financial statements due to the fact that they are more contemporaneous with the POR than 2011 financial statements. The Department considers a source to be contemporaneous regardless of the number of months of overlap with the POR. However, the Department's practice is to use one set of financial statements from a company that overlaps with the most months of the POR when the record contains multiple financial statements from a single company.[59] The POR covers more months of 2012. We have 2012 financial statements for: Smart Plywood; Mount Banahaw; Mintrade Corporation ("Mintrade"); Davao Panels Enterprises ("Davao Panels"); Winlex Marketing Corporation ("Winlex"); Republic Wooden Commodities Manufacturing Corporation ("Republic Wooden)"; and Novawood Forest Industries Corporation ("Novawood"), and thus, we have not

[54] *See Frozen Shrimp China* and accompanying IDM at Comment 1.
[55] *See Mushrooms* and accompanying IDM at Comment 1; *see also Crawfish* and accompanying IDM at Comment 2.
[56] 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.*
[57] *See* Prelim SV Memo.
[58] *See* Surrogate Values for Final Results, submitted by interested parties in December 2013.
[59] *See Citric Acid* and accompanying IDM at Comment 8.

considered their 2011 financial statements.. Additionally, we will not consider the 2010 financial statements for Industrial Plywood as this is not contemporaneous with the POR.

We agree with Armstrong and Fine Furniture that the Department has a preference to use financial statements from companies that are at a similar level of integration as the respondents involved in the proceeding.[60] In this review, two of the respondents (*i.e.*, Armstrong and Minglin) reported that they produced multilayered wood flooring exclusively with purchased veneers; however, the other respondent (*i.e.*, Fine Furniture) reported that it used a combination of purchased veneers and veneers that were cut from purchased logs.[61] Accordingly, record evidence indicates that one of the companies in this review is at least somewhat involved in earlier stages of the production process within its levels of integration. However, none of the respondents reported producing their own logs, which would represent a level of integration incompatible with the respondents in this review. Therefore, we have not used the 2012 financial statements from Novawood, Republic Wooden or Sirawai, all of which contain evidence of fully integrated operations involving logging.[62]

Respondents object to the Department's preliminary decision to reject seven financial statements for evidence of non-interest bearing loans or advances from shareholders with no definite call period. Respondents argue that these advances should be viewed as investments in the company by its owners, similar to the initial investment of capital into the company at its foundation.[63] To support their claim, respondents cite *Steel Bar from India*, where the Department made adjustments to financial ratios by adding weight-averaged interest rates to the loans.[64] In this proceeding, respondents provided the federal interest rate charged for bank prime loans in 2011 and 2012, and argue that the Department should add them to the ratio calculation, as we did in *Steel Bar*.[65] However, the Department has a long standing practice in non-market economy cases to not make any adjustments to financial statements that might introduce distortions into the data, rather than achieve greater accuracy.[66] 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.[67] In this instance, because the companies explicitly stated that they received interest-free loans or did not claim any interest expense, we cannot determine the final impact of the loan on the financial ratios.[68] Accordingly, we will continue to reject any financial statements with evidence of non-interest bearing loans or advances from shareholders with no definite call period. Specifically, for the final results, we will not consider the following financial statements in our financial ratios

[60] *See Plywood Final* and accompanying IDM at Comment 7.
[61] *See* company-specific analysis memoranda published on November 18, 2013.
[62] *See* Letter to the Department from Layo Wood, regarding "Multilayered Wood Flooring from China: Surrogate Values for the Preliminary Results," (August 6, 2013); *see also* Letter to the Department from Armstrong, regarding "Publically Available Surrogate Value Information," (December 18, 2013).
[63] *See* Letter to the Department from Layo Wood (January 13, 2014).
[64] *See Steel Bar* and accompanying IDM at Comment 7.
[65] *See* Layo Wood Final SV submission at Exhibit 21 (December 18, 2013).
[66] *See Plywood Final* and accompanying IDM at Comment 7.
[67] *See Citric Acid* and accompanying IDM 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.").
[68] *See Wood Flooring NSR Final* and accompanying IDM at Comment 1.

calculations: Davao Panels; Mintrade; Baganga Plywood Corporation; Smart Plywood; Mega Plywood and Veneering Master.[69]

Additionally, the Department used ILO data from Chapter 6A of the Yearbook to value labor, which reflects all manufacturing costs related to labor, including wages, earnings, benefits, housing, training, *etc*. The financial statements used to calculate financial ratios in this review sufficiently detail labor expenses to allow the Department to isolate manufacturing labor, indirect labor and non-remuneration type compensation, such as employee benefits. Therefore, consistent with *Labor Methodologies*, the Department treated any item identified as indirect labor or employee benefits as labor in each company's surrogate financial ratios calculation.[70] As a result, we treated indirect labor, non-remunerative compensation and benefits included in Chapter 6A of the ILO's calculation of wages as labor in our surrogate financial ratios and not as manufacturing overhead or SG&A.[71]

The following companies will be discussed individually because they were placed on the record after publication of the *Preliminary Results*, do not fit into the categories listed above and/or were raised in arguments by the interested parties in their respective case and rebuttal briefs:

<u>Winlex Marketing Corporation ("Winlex"):</u> The Department has a history of rejecting financial statements from Winlex due to the absence of Note 9 in the company's financial statements.[72] As stated in the *Plywood Final*, the Department prefers financial statements that are complete. In the instant case, we determined that the Winlex 2011 and 2012 financial statements are incomplete because they are missing Note 9.[73] Therefore, we have not included the 2011 or 2012 financial statements from Winlex in calculating surrogate financial ratios due to their flaws.

<u>Industrial Plywood:</u> After publication of the *Preliminary Results*, Fine Furniture placed the 2010 and 2011 financial statements for Industrial Plywood on the record.[74] After examining Industrial Plywood's 2011 financial statements, we found a discrepancy in the financial statements related to Note 5 "Inventory" and Note 11 "Cost of Sales." Specifically, the Finished Goods Inventory listed in Note 5 has a value of 487,770.58 Philippine Pesos, while Note 11 lists Finished Goods Inventory ending with a value of 427,574.58 Philippine Pesos, which is subtracted from the overall cost of sales.[75] Unlike other financial statements on the record, this one does not provide any break down of inventory movement during the fiscal year for the Department to ascertain the correct value of the finished goods inventory at the end of the year. The Department uses the value of inventory movements and finished goods to calculate overhead for surrogate financial

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[69] *See* Letter to the Department from Fine Furniture, regarding "Surrogate Value Comments," (May 24, 2013); *see also* Letter to the Department from Minglin, regarding "Rebuttal Surrogate Value Submission," (June 3, 2013); *see also* Letter to the Department from Armstrong (December 18, 2013); *see also* Letter to the Department from Fine Furniture, regarding "Post-Prelim Submission of Publicly Available Information to Value Factors," (December 18, 2013).
[70] *See Labor Methodologies*.
[71] *See* Final SV Memo.
[72] *See Plywood Final* and accompanying IDM at Comment 7; *see also Wood Flooring NSR Final* and accompanying IDM at Comment 1.
[73] *See* Letter to the Department from Minglin, regarding "Surrogate Value Comments," (May 24, 2013).
[74] *See* Letter to the Department from Fine Furniture (December 18, 2013).
[75] *See id*.

ratios; however, the calculation of the overhead ratio would be skewed because of the inability to determine the correct inventory movement figures. Therefore, we have not considered the 2011 financial statements from Industrial Plywood. Further, we have not considered the 2010 financial statements from Industrial Plywood because we have contemporaneous financial statements on the record to calculate the surrogate financial ratios.

Tirta: Respondents placed the 2011 annual report from Tirta on the record following the publication of the *Preliminary Results*.[76] While Indonesia is listed on the surrogate country list provided by the Department, we also prefer using publicly available information from a single surrogate country, which in this segment of the proceeding is the Philippines.[77] Additionally, we have useable contemporaneous financial statements from our surrogate country (*i.e.*, the Philippines). Therefore, we have not used Tirta's financial statements to calculate surrogate financial ratios.

Mount Banahaw: The Department continues to determine that the financial statements from Mount Banahaw are appropriate to use in the calculation of financial ratios. However, we have only used the 2012 financial statements and disregarded the 2011 financial statements that we used in the preliminary results, because we prefer to use financial statements from a company that overlaps with the most months of the POR when the record contains multiple financial statements from a single company.[78]

Tagum: Armstrong argues that Tagum's integration level is similar to Mega Plywood, which the Department rejected in the preliminary results due to integration. Following the publication of the *Preliminary Results*, the Department determined that Mega Plywood was the recipient of a non-interest bearing loan from shareholders with no definite call period, which disqualifies its financial statements from use in this proceeding.[79] Regarding the integration level of Tagum, Armstrong points out that Tagum's Accounts Payable has an entry to "log suppliers," which indicates that it produces veneer sheets from purchased logs.[80] As discussed above, the respondents in this proceeding represent companies that produce multilayered wood flooring from both purchased and self-produced veneer sheets.[81] Therefore, the Department does not agree with Armstrong that Tagum's integration level exceeds the integration level of certain respondents. Additionally, Tagum's financial statement meets all of the Department's criteria for use to calculate surrogate financial ratios and we continued to use it in these final results.

Charverson Wood Industry Corporation ("Charverson"): We agree with respondents that the description of the company's business activities contained within the financial statements is too vague to determine whether the company produces comparable merchandise to the respondents.[82] According to Charverson's financial statements, the company is described as

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[76] *See* Letter to the Department from Layo Wood, regarding "Surrogate Values for the Final Results," (December 18, 2013).
[77] *See* 19 CFR 351.408(c)(2).
[78] *See Citric Acid* and accompanying IDM at Comment 8.
[79] *See* Letter to the Department from Fine Furniture (May 24, 2013).
[80] *See* Letter to the Department from CAHP (May 24, 2014).
[81] *See* company-specific analysis memoranda published on November 18, 2013.
[82] *See* Letter to the Department from CAHP, regarding "Multilayered Wood Flooring from the People's Republic of China," (May 24, 2013).

"engaged in the making, manufacturing, processing and selling of all forms of wood products."[83] The Department notes that, although CAHP argues that Charverson is listed as a plywood producer in information provided by the Philippine Forest Management Bureau ("PFMB"), the company that is actually listed by PFMB is "Chaverson Wood Industries Corp." and the Department has no information to determine if these two entities are the same.[84] Additionally, while Charverson might be a producer of plywood, we have no record evidence to determine whether it produces plywood at the same level of the respondents in this proceeding. As previously stated, Charverson is described in its financial statements as a producer of all forms of wood products, which is too vague to determine how involved it is in plywood production. Accordingly, we have not used the 2011 financial statements from Charverson to calculate financial ratios in these final results, which is consistent with the findings in *Plywood Preliminary Results*.[85]

Richmond Plywood Corporation ("RPC") and Philippine Softwood Products, Inc. ("PSP"): The Department does not agree with respondents that RPC and PSP's 2011 financial statements should be excluded from our ratio calculation because they appear to be no longer in operation. Although respondents provided evidence that appears to be from a former executive at PSP who stated that the company is no longer in operation, the rest of the claim is purely speculative (*i.e.*, failure to submit an annual report with the Philippine Securities and Exchange Commission necessarily means that the company is no longer in operation).[86]

However, respondents provide a Philippine Veneer Cost Study from June 2013, which they claim as evidence for the closing of PSP and RPC.[87] On page 5 of the study, the authors note that RPC was "reported erroneously to be no longer operating; in fact this integrated operation is both producing veneer from domestic log sources and manufacturing the resulting veneer into plywood."[88] The authors additionally note that PSP ceased operations effective October 2012 due to financial difficulties. While the Department is using evidence within this cost study to determine that RPC produces veneer sheets from purchased logs, we have not determined that the statement about PSP should disqualify its financial statements from being used to calculate surrogate financial ratios, because both companies were financially healthy in 2011 and posted a profit.[89] Even if these companies are no longer in operation, there are myriad reasons for why a company might temporarily or permanently shut down operations. Because both companies were financially healthy and posted a profit in 2011, which is contemporaneous with the POR, we continued to use their financial statements to calculate surrogate financial ratios.

Armstrong also argues against using RPC and PSP because their financial statements have multiple pages with the same numbers, are missing page numbers entirely and the language does not flow from page to page, which calls into question the reliability of the statements as a whole. The Department, while acknowledging that the statements contain issues such as repeated paragraphs, missing page numbers or pages that are out of sequence, does not agree that these

[83] *See id.*
[84] *See* Letter to the Department from CAHP (January 22, 2014).
[85] *See Plywood Prelim* and accompanying SV Memorandum, unchanged in *Plywood Final.*
[86] *See* Letter to the Department from Layo Wood (January 13, 2014).
[87] *See* Letter to the Department from Layo Wood (August 6, 2013), at Exhibit 2.
[88] *See id.*
[89] *See* Letter to the Department from CAHP (May 24, 2013).

negate their reliability. While the statements are sloppily organized in certain sections, the statements appear to be complete and reliable for use in the calculation of financial ratios. Unlike the financial statements for Winlex, the RPC and PSP financial statements are not missing any information, such as, Notes or any references to qualified opinions, non-interest bearing advances from shareholders, or any other information that might cause the Department to reject their use. The reliability of the 2011 financial statements from RPC and PSP is further demonstrated by their previous use by the Department in the *Plywood Prelim* as well as the *Wood Flooring NSR Final*.[90]

Therefore, for the final results, the Department calculated financial ratios using the 2011 financial statements from Tagum, PSP and RPC, and the 2012 financial statements from Mount Banahaw.[91] However, for the final results, the Department segregated the financial statements based on the integration level of the respondents. Fine Furniture reported purchasing logs to make a certain percentage of its veneer inputs; however, Minglin and Armstrong have reported purchasing only veneer inputs and are not involved in manufacturing veneers from purchased logs or lumber. Of the four financial statements on the record that we used in these final results, there is evidence that Tagum and RPC are involved in the production of veneer from log sources.[92] Therefore, for the final results, the Department calculated financial ratios for Armstrong and Minglin using the financial statements from PSP and Mount Banahaw, and calculated the financial ratios for Fine Furniture using the financial statements from RPC and Tagum.[93]

Comment 3: Whether the VAT Calculation is Appropriate

Minglin:

- The Department's recalculation of Minglin's reported VAT in the *Preliminary Results*, based on the FOB (China port), net of 8 percent of un-refunded VAT, is not in accordance with the law because the Department did not explain its reasons for not using Minglin's reported VAT, and such a VAT calculation significantly overstates Minglin's actual VAT.
- The Department's calculation fails to take into account that, under Chinese law, the 17 percent VAT paid by Minglin on its raw materials offsets any VAT owed on any sale. As such, the Department's calculation improperly overstates the 17% VAT paid by Minglin on its export sales.[94]
- In its final results, the Department should use the percentage of un-refundable VAT reported by Minglin as the best available information because it ties to Minglin's books and records and reflects the amount of non-refundable VAT considered by the statute and Chinese law.

[90] *See Plywood Prelim* and accompanying Decision Memorandum (not used in *Final Results* due to a change in the surrogate country); *see also Wood Flooring NSR Prelim* and accompanying Decision Memorandum, unchanged in *Wood Flooring NSR Final* and accompanying IDM.
[91] *See* Final SV Memo.
[92] *See* Letter to the Department from CAHP (May 24, 2013) at Exhibit 4; *see also* Letter to the Department from Layo Wood (August 6, 2013) at Exhibit 2.
[93] *See* Final SV Memo.
[94] *See* Minglin's Section C response, dated May 13, 2013, at C-35 to C-37, and Article 4 of the *Regulation of the Value Added Tax in* Exhibits C-3 and C-4.

Armstrong:

- The Department should use Armstrong's reported un-refundable VAT as its effective VAT rate during the POR since it is calculated based on its actual VAT payments, less VAT refund.
- The Department should not ignore actual official tax documents filed with and accepted by the Government of China ("GOC"), in favor of a nominal rate not reflective of Armstrong's actual net VAT position during the POR.
- VAT on Armstrong's export sales is just one part of the equation, and by focusing on just that one part of the equation, the Department is not properly accounting for Armstrong's effective VAT rate during the POR.
- The Department points to no deficiency in Armstrong's tax returns or official refund documentation from the Chinese government reflecting Armstrong's net VAT position.
- Armstrong's reported VAT is consistent with the Department's announced methodological change in that the new methodology requires the agency to reduce the U.S. price by the actual net amount of VAT paid by Armstrong, but not rebated.
- It would be distortive for the Department to impute more VAT to Armstrong than the amount that was actually paid.

Fine Furniture:

- In the final results, the Department should revise its VAT calculation from the preliminary results, using the VAT actually reported by Fine Furniture.
- Fine Furniture reported VAT amounts in the U.S. sales database by multiplying the un-refunded VAT rate by the invoiced export value when the subject merchandise left China. This calculation accurately reflects the amount of VAT assessed by the GOC pursuant to the Provisional Regulations on Value Added Tax of the People's Republic of China, which provides that the amount of tax on sales is equal to the export sales value multiplied by the applicable VAT rate.[95]
- In the preliminary results, the Department recalculated Fine Furniture's VAT based on a value that includes mark-ups for Fine Furniture's affiliated reseller and importer after exportation.
- The formula used by the Department to calculate VAT is not reflective of the actual amount of un-refundable input VAT assessed by the GOC on Fine Furniture's exports of the subject merchandise and, therefore, does not reflect the true FOB value.

CAHP:

- The Department properly applied its revised methodology for treating export taxes and other charges in non-market economies by reducing respondents' export prices by eight percent, which represents the net amount of VAT not rebated (*i.e.*, 17 percent minus nine percent).[96]
- The Department's treatment of VAT is consistent with its announced methodology and should be maintained for purposes of the Final Results.[97]

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[95] *See* Fine Furniture's Case Brief at 37.
[96] *See* Petitioner's Rebuttal Brief at 35.
[97] *See id.* at 40.

Department's Position: In 2012, the Department announced a change of methodology with respect to the calculation of the EP and CEP to include an adjustment of any un-refunded (herein irrecoverable) VAT in certain non-market economies in accordance with section 772(c)(2)(B) of the Act. [98] In this announcement, the Department stated that when a non-market economy government has imposed an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[99] In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers. That stands in contrast to China's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[100] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where this irrecoverable VAT is a fixed percentage of export price, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. export price downward by this same percentage.[101]

The Department's methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determine the irrecoverable VAT tax on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this review by respondents indicates that, according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is nine percent.[102] For the purposes of these final results, therefore, we removed from U.S. price the difference between the rates (eight percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation.[103]

As a preliminary matter, we observe that there is substantial agreement among respondents regarding the first step in the methodology of determining the irrecoverable VAT on exports of subject merchandise.[104] Pursuant to *Circular 7*, irrecoverable VAT is defined as (1) FOB value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[105] Only the first variable, export value, is

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[98] *See Methodological Change for Implementation of Section 772(c)(2)(B).*
[99] *See id.; see also Chlorinated Isos 11/12 Final* and accompanying IDM Comment 5.
[100] *See, e.g.*, Minglin's May 13, 2013 response at C-36 to C-37; *see also* Article III.3.4 of *Circular 7*; *Methodological Change for Implementation of Section 772(c)(2)(B)* at 36483.
[101] *See Methodological Change for Implementation of Section 772(c)(2)(B).*
[102] *See* Minglin's September 5, 2013 response at Exhibit C-1 for a product specific schedule of official VAT rates according to HTS codes.
[103] *See* Minglin's May 13, 2013 at 35-37 and Exhibit C-3 citing to *Circular 7* at Article III.3.4.
[104] *See, e.g.*, Minglin's May 13, 2013 response at C-36 to C-37.
[105] *See* Minglin's May 13, 2013 at 35-37 and Exhibit C-3 citing to *Circular 7* at Article III.3.4., which specifies that irrecoverable VAT = (F.O.B. export value – bonded imports) * (standard VAT levy rate – VAT rebate applicable to exported goods). It is important to note that *Circular 7* allows the deduction from export value for the portion of bonded raw material imports used for export; however, none of the respondents under review claimed using bonded imports to produce subject merchandise in this review.

unique to respondents while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.[106]

The Department notes that Minglin, Armstrong, and Fine Furniture each began from the starting point of calculating irrecoverable VAT for the purposes of the price adjustment pursuant to section 772(c)(2)(B) of the Act. Minglin, Armstrong, and Fine Furniture acknowledge that for subject merchandise, an irrecoverable VAT of eight percent can be calculated on export sales of subject merchandise. Minglin, for example, states that "the Chinese government has determined that eight percent of the VAT paid on exports is non-refundable."[107] Similarly, Fine Furniture explains that "the VAT not refunded on export of subject merchandise is eight percent on Fine Furniture's export price."[108]

For step two in the methodology, the Department notes that Minglin, Armstrong, and Fine Furniture each submitted an amount for irrecoverable VAT for the U.S. price adjustment pursuant to section 772(c)(2)(B) of the Act. Fine Furniture agrees with the Department's next step in the methodology that entails removing the entire amount of irrecoverable VAT applicable to subject merchandise, and is only seeking a minor adjustment to the export value the Department relied on in the preliminary results when applying the irrecoverable VAT formula (addressed in greater detail later).[109] However, Minglin and Armstrong argue that because irrevocable VAT is a function of aggregate export sales (*i.e.*, to all markets) and constitutes a company liability, the proper U.S. price adjustment is one that reflects an allocation of that company liability across all sales (domestic and export).[110] Minglin and Armstrong, therefore, propose an adjustment to U.S. price for irrevocable VAT allocated on that basis.[111] After careful consideration of these arguments, for all of the reasons explained below, the Department decided to continue with its calculation methodology.

19 CFR 351.401(c) requires that the Department rely on price adjustments that are "reasonably attributable to the subject merchandise." As respondents acknowledge, China's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry.[112] These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Minglin's and Armstrong's proposal to calculate a "net" or "effective" VAT position company-wide[113] significantly reduces the impact

[106] *See* Article III.3.4 of *Circular 7*.
[107] *See* Minglin's September 5, 2013 response at 4.
[108] *See* Fine Furniture's August 21, 2013 response at 6 and January 13, 2013 Case Brief at 37; *see also* at Exhibit S-24 of Armstrong's July 12, 2013 submission where irrecoverable VAT is calculated in line 14 of the monthly VAT returns.
[109] *See* Fine Furniture's January 13, 2013 Case Brief at 37.
[110] *See* Minglin's May 13, 2013 response at C-35 to C-37 and Exhibit C-5; s*ee also* Armstrong's January 13, 2014 Case Brief at 52-53 and Exhibit S-24 of the July 1, 2013 submission.
[111] *See Circular 7* at Article III.3.1. For the company-wide liability, irrecoverable VAT is one component of the build-up of the VAT payable in a given period. VAT payable is defined as equal to the Output VAT collected on domestic sales – (Input VAT paid – Irrecoverable VAT). *Circular 7* defines Irrecoverable VAT as an increase in the company's VAT liability and that reduces the input VAT paid that is refundable.
[112] *See*, *e.g.*, Minglin's September 5, 2013 response at Exhibit C-1 for a product specific schedule of official VAT rates according to HTS codes.
[113] *See*, *e.g.*, Armstrong's January 22, 2014 submission at 52-53.

of this product-specific tax by spreading it across products with potentially different VAT schedules and across domestic sales.

In seeking this methodological change, Minglin and Armstrong both characterize deducting a company-wide, net VAT position as more consistent with Chinese law and regulation or a more accurate reflection of their books and records. The Department disagrees. First, the Department's methodology is based on removing irrecoverable VAT as explicitly defined under Chinese regulation. With the exception of Fine Furniture's requested adjustment to export value, no respondent contests the Department's application of the irrecoverable VAT formula in *Circular 7*. Second, the Department's methodology is precisely tied to respondents' books and records since it relies on the prices in respondents' U.S. sales database. Finally, the Department's deduction of product-specific VAT from subject merchandise is a more reasonable and accurate methodology since the export tax, duty, or other charge is a product-specific expense that is directly linked with exportation of subject merchandise. Respondents' methodology, in contrast, effectively ignores this direct link and dilutes the product-specific tax effect as previously explained. Such an adjustment would introduce distortion into the dumping margin calculation and obfuscate the true "apples-to-apples" comparison of U.S. price with normal value on a product-specific, tax exclusive basis.

Furthermore, the Department finds that the most straightforward, consistent, and verifiable method to make this adjustment under section 772(c)(2)(B) is by relying on the standard formula provided for under Chinese tax law and regulation. In that respect, the Department notes that the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise. There could be any number of differences between the irrecoverable VAT reported for Chinese tax purposes and how the irrecoverable VAT is actually recorded in a given respondents' records. For all of the reasons stated above, we will not consider allocations across all company sales or across sales of products with different VAT schedules. The irrecoverable VAT liability is determined on a product-specific basis, and it is on this basis that the Department will consider respondent-specific claims for adjustments to the standard formula, taking into account whether such adjustments are permitted under Chinese law and regulation and supported with record evidence.

Respondents argue that the Department's VAT calculation in the preliminary results was unwarranted because export sales of the subject merchandise were not subject to a VAT obligation. As an initial matter, and as described above, the input VAT that the GOC does not refund on export sales stands in contrast to domestic sales where there is no VAT expense and thus the irrecoverable VAT expense on export sales amounts to a tax, duty or other charge imposed on exports. The irrecoverable VAT only arises through the fact that there were export sales.[114] In this regard, in its original and supplemental questionnaires to respondents, the Department specifically requested that they report information involving VAT[115] and they acknowledged that they paid VAT on the inputs used to produce subject merchandise.[116] For all

[114] *Methodological Change for Implementation of Section 772(c)(2)(B)* at 36483.
[115] *See, e.g.*, the Department's 2011 – 2012 Antidumping First Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Antidumping Questionnaire, dated March 22, 2013, at C-26.
[116] *See, e.g.*, pages 3 and 4 of Layo Wood's July 29, 2013 submission.

these reasons, we reject respondents' argument because subject merchandise was subject to a VAT obligation imposed on exports.

Moreover, we disagree with Fine Furniture's argument that the Department incorrectly calculated VAT based on a value that includes mark-ups for Fine Furniture's affiliated reseller and importer after exportation or that such a VAT calculation is not reflective of the actual amount of un-refundable input VAT on Fine Furniture's exports of the subject merchandise. As indicated above, according to the Chinese tax regulations, irrecoverable VAT is calculated based on the FOB value of the exported good.[117] Fine Furniture, however, reported VAT based on the domestic sales value in China between Fine Furniture and its affiliated reseller. Accordingly, the domestic sales value is not appropriate for calculating the FOB export sales value. Moreover, contrary to Fine Furniture's contention, the Department properly calculated VAT based on an FOB export value because FOB value is based on the net FOB U.S. price, exclusive of all expenses and adjustments incurred after the merchandise left the port of exportation in China. [118] Accordingly, we find no merit in Fine Furniture's argument that the Department improperly calculate VAT based on an incorrect export sales value.

For the reasons noted above, we calculated the net FOB CEP or EP prices, exclusive of the unrefunded VAT for purposes of the final results. We note that, in the preliminary results, the Department inadvertently used an incorrect formula when calculating the net FOB CEP and EP prices, exclusive of VAT. [119] As a result of this ministerial error, VAT was not properly captured in the net FOB CEP and EP prices. In the final results, we corrected this error in the margin calculation for each of the respondents. For further details, see each respondent's respective analysis memorandum for the final results.

Comment 4: Whether the Surrogate Value for B&H is Appropriate

Fine Furniture:

- The Department should adjust the surrogate value for B&H by removing fees for obtaining letters of credit that are included in the cost of document preparation in the data published by the World Bank in *Doing Business 2013* used by the Department to value B&H in the preliminary results.
- There is no record evidence to suggest that Fine Furniture incurred fees for letters of credit implicit in its cost for B&H to warrant the inclusion of such fees in the surrogate value used for B&H.
- Excluding fees for obtaining letters of credit is consistent with the Department's recent determination.[120]

[117] *See Circular 7*.
[118] *See* Analysis for the Final Results of Multilayered Wood Flooring from the People's Republic of China: Fine Furniture (Shanghai) Limited, issued concurrently with this memorandum.
[119] *See, e.g.*, Attachment II of the Memorandum to the File: Analysis for the Preliminary Results of Multilayered Wood Flooring from the People's Republic of China: Fine Furniture (Shanghai) Limited, dated November 18, 2013.
[120] *See Baroque Timber* at 30, 32, in which the CIT reviewed B&H data from *Doing Business* used in the Department's final determination of the investigation underlying this order and found that said surrogate source included fees for letters of credit, which were not incurred by the respondent. On remand, the Department recalculated B&H by excluding fees for obtaining letter of credit. *See Baroque Timber*, Final Results of Redetermination Pursuant to Court Order at 24, ECF No. 132 (Nov. 14,2013).

Armstrong:

- The surrogate source of the *Doing Business 2013* report, used by the Department in the *Preliminary Results* to value B&H, reflects hypothetical data that do not constitute the "best information" available on the administrative record.
- The Department should use the data from the OCTG AD Investigation to value B&H in the final results of this administrative review.
- Should the Department continue to use the *Doing Business 2013* report to value the B&H, the B&H values must be allocated based upon a meaningful weight for a cargo container rather than a hypothetical weight.
- If the Department continues to value B&H in the final results based upon data from the *Doing Business 2013* report, the Department must remove letter of credit expenses from the value for B&H.

CAHP:

- For the final results, the Department should continue to value domestic brokerage and handling using the rate of 0.0415 USD/KG sourced from *Doing Business 2013*.
- The issue raised by Armstrong with respect to using the maximum container weight instead of the weight of 10 metric tons, which is the basis upon which B&H expenses are collected by the World Bank, has been argued in multiple cases and rejected by the Department in each instance.[121]
- The Department should not remove letter of credit fees, because a letter of credit is not listed as one of the documents required for exportation in the Philippines for which costs are provided in the line item for "documents preparation."[122]
- Regardless of the World Bank's intention for survey participants to include the costs associated with a letter of credit, if the actual survey participants do not list a letter of credit as a document that they have accounted for, then there is no basis to conclude that the participants included the costs associated with letters of credit. For this reason, no adjustment should be made for estimated letter of credit costs.
- The four price quotes for B&H obtained by FEA are from May 2013; therefore, not contemporaneous with the POR. Moreover, the combination of the four price quotes does not represent a broad market average and they are not publicly available.
- The nature of the discussions between FEA's employee and the Philippine brokerage houses is unclear. It is also unclear whether FEA's employee included in his affidavit each price quote he received.
- The Department should not rely on publicly ranged data from the OCTG AD Investigation, proposed by respondents because the data are: (a) from only one company and are likely to be for a single port near to that company, (b) specific to the expenses associated with OCTG; and (c) the OCTG AD investigation is ongoing and the data have not been verified. Moreover, there is no explanation as to the expenses contained in this single respondent's reported B&H.

[121] *See Stilbenic OBA* and accompanying IDM at 16-17.
[122] *See* CAHP's Rebuttal Brief at 5-6.

Department's Position: We disagree with Armstrong that the B&H information provided in *Doing Business 2013* does not constitute the best information on the record. First, Armstrong did not provide conclusive evidence that the B&H charges in *Doing Business 2013* are not representative of a broad market average of B&H charges in the Philippines. In support of its argument, respondents claim that the majority of the contributors of B&H information to *Doing Business 2013* have no first-hand experience with the freight forwarding business or a direct relationship with exporting customers. However, respondents did not present any specific evidence in support of its conclusion that the B&H information in *Doing Business 2013* does not reflect experiences of contributing companies in the Philippines. We also note that the information submitted on the record regarding *Doing Business 2013* indicates that the referenced B&H data are obtained from local freight forwarders; shipping lines, customs brokers, port officials and banks.[123] Accordingly, we find respondents' conclusion that the majority of contributors of B&H information to *Doing Business 2013* have no first-hand experience with the freight forwarding business or a direct relationship with exporting customers to be speculative at best. Second, respondents argue that B&H cost in *Doing Business 2013* does not reflect the country-wide or broad market average cost because B&H information is based on only the largest business city in the Philippines. In this regard, we note that, *Doing Business 2013* made several assumptions about the types of business from which it obtained B&H data. One of these assumptions is that the business is located in the "economy's largest business city."[124] However, while *Doing Business 2013* initially assumes that the data are obtained from the largest business city in the economy, the actual data reflected in *Doing Business 2013* are based on the experience of contributors located in several cities within the Philippines. This is evident from the list of the contributors of B&H data to *Doing Business 2013*, which shows that these contributors are located in at least eight cities within the Philippines.[125] Accordingly, the argument that B&H cost in *Doing Business 2013* does not reflect the country-wide or broad market average cost because said information is based on only one city in the Philippines is contradicted by record evidence.

Moreover, we find that the price quotes obtained from Philippine freight forwarders by FEA's employee that respondents placed on the record are not appropriate sources for the surrogate values used to value B&H charges in the final results because these price quotes appear to have been obtained exclusively by, and intended for, FEA[126] in direct response to a request for such prices. We find that these prices do not meet the criteria of public availability upon which the Department has historically relied when choosing appropriate surrogate values in order to lessen the possibility of manipulation of the values based on documents prepared specifically for use in trade remedy cases.[127] Without access to all of the information on how the data were obtained (including the sources and any adjustments that may have been made), it is impossible to confirm that the data are complete and/or accurate. As a general policy, the Department must be cautious

[123] *See* "Trading Across Borders Methodology" in *Doing Business 2013*, provided in Exhibit 13 of Layo Wood's August 6, 2013 submission.
[124] *See id.*
[125] *See id.* at Exhibit 14, which shows that the contributors of data to *Doing Business 2013,* who agreed to be acknowledged, are located in cities, such as, Makati, Manila, Paranaque, Taguig, Bonifacio Global, Paranaque, Pasing and Muntinlupa.
[126] *See*, *e.g.*, letter, with price quotes for 20', 40', and 40' HC containers, from Enrie C. Balois, with Expeditors, to Mr. Greg Simon, with FEA, in Exhibit 9 of Layo Wood's December 18, 2013 submission.
[127] *See, e.g., Cased Pencils 03/04.*

in using selective price quotes.[128] A party could, for example, receive 10 quotes, and provide the Department with only the two or three it prefers. A party could also potentially influence the quote it receives from a company. There are many unknowns that accompany a price quote, so the Department does not favor the use of such information if other publicly available data are on the record. Contrary to the aforementioned price quotes, *Doing Business 2013* provides publicly available B&H information, which is surveyed from local freight forwarders, shipping lines, customs brokers, port officials and banks, located in different cities within the Philippines and is, therefore, representative of country-wide, broad market average B&H costs.

Armstrong also argues that the 10,000 kg per 20-foot container used as a basis for calculating the cost of B&H in *Doing Business* is hypothetical which, in their view, raises questions as to the credibility of such a source. In support of its argument, respondents state that the price quotes provide evidence that charges for B&H in the Philippines are on a container basis, irrespective of the weight loaded onto a container. However, upon reviewing the referenced price quotes, we found insufficient evidence to warrant a finding that the charges of B&H in the Philippines are exclusively on a container basis, irrespective of the weight loaded on a container, as respondents claim. For instance, we noted that one of the price quotes, obtained from the Philippine freight forwarder "SCM Creative Concepts Inc.," shows several B&H expense categories for 20' and 40' containers, such as arrastre, wharfage charges, container weighing, terminal & handling charges (THC), docs fee, security fee, export declaration charges and other customs charges.[129] However, the only expense category on the referenced price quote, described as being "Per Container Regardless of Wt and CBM" is that of customs fees.[130]

We note that certain of the B&H expenses in this price quote are also on the basis of a bill of lading, in different currencies (*i.e.*, Philippine pesos and U.S. dollars), and VAT inclusive. These facts also raise questions as to the reliability of such pricing information due to the lack of consistency in the reported B&H charges. Further, the price quotes obtained from Kerry ATS Logistics and Kuehne + Nagel, Inc., while they include B&H expense categories per 20' and 40' containers, they appear to exclude several B&H charges, such as charges for customs clearance and technical control costs, which include fees charged by Philippine Customs, Philippine customs inspection fees, and other administrative charges.[131] We also found that the referenced price quotes did not include certain B&H expense categories, which are contingent upon entries or a bill of lading.[132] These facts indicate that the information in the referenced price quotes on the record is not only incomplete, but also does not provide conclusive evidence that the costs for B&H are exclusively charged on the basis of the size of a container, bill of lading, or entries, irrespective of the weight of a container. It is also worth noting that the price quotes for both Kerry ATS Logistics and Kuehne + Nagel, Inc. show 10,000 kg corresponding to a dry cargo of 20' full load container, the same weight used in *Doing Business 2013*, and 20,000 kg corresponding to dry cargo of 40' full load container, as well as other maximum dry cargo weights. While the Kerry ATS Logistics price quote includes a note on a separate page indicating that the weight of the container is not relevant to B&H charges, the price quote itself shows the weights of containers, despite the claim that container weights bear no relevance to

[128] *See Synthetic Indigo* and accompanying IDM at Comment 11.
[129] *See id*.
[130] *See id*.
[131] *See* Exhibit 9 of Layo Wood's December 18, 2013 submission.
[132] *See id*.

B&H charges. For the reasons noted above, the Department finds the information provided in the above-referenced price quotes to be neither reliable for the valuation of B&H charges in this administrative review, nor conclusive with respect to the basis for the B&H charges.

With regard to *Doing Business 2013*,[133] the Department determined that 10,000 kg should continue to be used to calculate the B&H surrogate value because this is the weight of the shipment in a 20-foot container for which participants in the *Doing Business 2013* survey reported B&H costs.[134] Specifically, the B&H costs used to calculate the surrogate value were based upon the assumption that a 20-foot container contained 10,000 kg of product. If the Department were to use a different container load, as argued by Armstrong, it would be using a weight not related to the costs reported in the *Doing Business 2013* survey, which would result in an incorrect per-unit cost. Using 10,000 kg 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.[135]

Moreover, we agree with CAHP that the publicly ranged data for B&H specific to HLD, a Philippine respondent in the OCTG investigation, should not be used to the extent that such data are not the best information on the record for the valuation of B&H, because such company-specific data are not representative of a broad market average of B&H charges in the Philippines, compared to the pricing data provided in *Doing Business 2013*. For all these reasons, the Department determines to continue using the cost of B&H in *Doing Business 2013* in these final results because the cost of B&H based on such a source constitutes the best information available on the record of this administrative review.

We agree with Fine Furniture and Armstrong that the cost of obtaining letters of credit should be excluded from the total B&H costs reported in *Doing Business 2013*. Respondents in this administrative review provided evidence from the World Bank indicating that the cost of obtaining letters of credit is included in the cost of B&H.[136] Specifically, respondents obtained information from the World Bank indicating that the total cost of B&H in the Philippines provided in *Doing Business 2013* includes an average cost of $50.00 for obtaining a letter of credit.[137] We found no evidence to suggest that the respondents in this administrative review obtained letters of credit in the process of exporting the merchandise under consideration. Further, we note that CAHP did not argue that the respondents obtained a letter of credit, only that the *Doing Business 2013* survey does not include a letter of credit among the documents listed for B&H charges, which is contradicted by the evidence on the record. We note that excluding the cost of obtaining letters of credit from the total cost of B&H in *Doing Business 2013* is also consistent with the Department's remand redetermination in the investigation of this case.[138] Accordingly, for purposes of the final results, we revised the calculation of B&H by

[133] *See* Exhibit 4 of Armstrong's May 24, 2013, SV Submission.
[134] *See id*.
[135] *See, e.g., Nails Final Results* and accompanying IDM at Comment 3R.
[136] *See, e.g.,* Exhibit 15 of Layo Wood's August 6, 2013 surrogate value submission
[137] *See id.*
[138] *See Baroque Timber Indus. (Zongshan) Co. v. United States,* No. 12-00007, Final Results of Redetermination Pursuant to Court Order at 24, ECF No. 132 (Nov. 14,2013).

deducting the cost of $50 for obtaining a letter of credit from the total cost of B&H provided in *Doing Business 2013*.[139]

Comment 5: Whether the Net Weight Should be Used to Calculate the AUV

CAHP:

- When using the Philippine import statistics, the Department should, whenever possible, calculate import AUVs on a net-weight basis (KN), instead of the gross-weight basis (KG) used in the preliminary results, in order to be consistent with how respondents reported their FOPs and to ensure that total input costs are captured. Using the AUVs on a net-weight basis is consistent with the Department's past practice.[140]

Armstrong:

- While the Philippine import data did include both net and gross weight for many commodities, other commodities do not have net weight available, or have multiple units of measure available as the second unit of measure. Also, anomalies appear in the import data where there are inexplicable differences between the gross or net weight for certain inputs.
- The Department was well aware of the existence of two units of measure in the Philippine import data, and chose to consistently utilize the gross rate in its calculations to address anomalies between the gross and net weight for certain inputs.
- The Department should continue to use the primary unit of measure, gross weight, in order to consistently calculate AUVs for all commodities and avoid unfairly inflating the antidumping margin.

Department's Position: In the preliminary results, the Department inadvertently used the AUVs for gross weight, instead of the AUVs for net weight, to value the inputs reported by the mandatory respondents. We corrected this ministerial error in the final results by using the net AUVs, instead of the gross AUVs to value respondents' reported input quantities.[141] We agree with CAHP that the AUVs obtained from the GTA import statistics for the Philippine should be based on the net weight AUVs. The mandatory respondents in this administrative review reported their input quantities in their respective FOP databases based on unpacked quantities (*i.e.*, net weight).[142] Accordingly, the only way to capture the entire cost of such inputs is to use the AUVs based on the same basis, *i.e.*, net weight. To do otherwise would result in a failure to capture the total input cost. This methodology is consistent with the Department's practice of using net AUVs when valuing respondents' reported inputs. For example, in the 2008 final results of wooden bedroom furniture from the PRC, in response to a respondent's argument that gross AUVs should be used instead of the net AUVs, the Department stated that:

[139] *See* Exhibit 15 of Layo Wood's August 6, 2013, and Final SV Memorandum.
[140] CAHP cites *Wood Flooring LTFV Final* and accompanying IDM at Comment 16.
[141] *See* Final SV Memo. Please note that the GTA data for the Philippines on the record include fields for both gross AUVs and net AUVs.
[142] *See, e.g.*, letter from Fine Furniture to the Department, dated September 19, 2013: Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Section C and D Supplemental Questionnaire Response to Fine Furniture (Shanghai) Limited.

> Because Fairmont reports input quantities in its FOP spreadsheet based on unpacked quantity (*i.e.*, net weight), the only possible way to capture the entire cost of the input cost (in this case the total import cost) is by dividing by net weight (*i.e.*, unpacked weight). To do otherwise would result in a failure to capture the total input cost (*i.e.*, import cost).[143]

For the aforementioned reason, we disagree with the argument that the gross AUVs are appropriate for valuing respondents' reported input quantities. Moreover, although we agree with Armstrong that the net AUVs for certain HTS subheadings are not available, because the unit of measure for such HTS subheadings could not be converted to the unit of measure of reported inputs, we believe that such occurrence in the GTA data is not pervasive. In this regard, we note that most of the GTA net AUVs are in net kilograms (*i.e.*, "KN"), and the majority of the remaining net AUVs are in cubic decimeter (*i.e.*, "DM^{3}"").[144] We also note that the net AUVs corresponding to KN and DM^3 units of measure could be converted into values matching the unit of measure in which the respondents reported their inputs. Furthermore, to ensure that all HTS subheadings reflect values that could be converted to the unit of measure of the reported input quantities, whenever the net AUVs are unavailable for certain HTS subheadings, we used the gross AUVs to value the inputs at issue, as the best information available, for purposes of the final results.[145]

Finally, Armstrong contends that anomalies exist in the GTA data because of the percentage difference between the gross AUVs and net AUVs. However, Armstrong presented no evidence to substantiate its claim that such anomalies exist. In support of its argument, Armstrong appears to have relied upon a comparison of the percentage difference in the net and gross AUVs among the different HTS subheadings. However, Armstrong's comparison has no reference point, as its comparison is conducted across different HTS subheadings, for completely different inputs. Accordingly, we find no merit in Armstrong's argument that anomalies exist in the GTA net value data.

<u>General Surrogate Value Issues</u>

Comment 6: Surrogate Value for Non-Coniferous, Non-Tropical Face Veneer

CAHP:

- A number of different benchmark prices demonstrate that the value of Philippine imports under HTS category 408.90.10-00 is aberrational and cannot be deemed to be comparable to the high-priced, high-quality NCNT face veneers used by Respondents in the production of the subject merchandise.
- The official import data from the Philippine Bureau of Import Services describes the veneer imports from Malaysia under 4408.90.10 as "Malaysian Hardwood Rotary Cut Veneer," and Malaysian hardwoods are tropical hardwoods of species that are not remotely similar to the species of the NCNT face veneers used by respondents.

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[143] *See, e.g.*, *WBF 2008 Final Results* and accompanying IDM at Comment 15.
[144] *See* Final SV Memo at Attachment I.
[145] *See* Final SV Memo.

- The record of this administrative review is replete with evidence documenting the significant variations in veneer prices. In *Solar Cells*, the Department faced similar facts and issues with respect to valuing polysilicon and determined that international prices were the best available information in that investigation.
- Imports of NCNT veneers from Malaysia during the POR under 4408.90.10-00 were from Samling Plywood (Bintulu). The Samling Group is an interested party in this administrative review. In *Hot Rolled Carbon Steel Romania*, the Department declined to use surrogate value data from an entity that had a stake in the outcome of the review.
- If the Department is unwilling to use the species-specific pricing data submitted by CAHP after the preliminary results and continues to rely on Philippine imports classified under 4408.90.10-00, it should exclude imports from Malaysia.
- As a final option, the Department could use the median AUV for imports from all surrogate countries on the Office of Policy list to value Respondents' face veneers.

Armstrong:

- The administrative record in this review supports the Department's decision to value NCNT face veneers using Philippine import data.
- CAHP's flawed benchmark data provide no credence for changing surrogate countries to value veneers in this review. Philippine import data, including Philippine imports from Malaysia, continue to be the best source to value surrogate values.
- In the preliminary results, the Department found no record evidence that the value of Philippine imports from Malaysia are distorted by virtue of any individual company's involvement in the exportation from Malaysia. Petitioner provides no additional information to support its outlandish claims, and the Department considered the same argument in reference to Samling Plywood (Bintulu) in the investigation of hardwood and decorative plywood, similarly noting that Petitioners provided no evidence for their claim that the imports from Malaysia are unusable as SVs.
- The Colombian, Ecuadorian and Peruvian markets are tainted and unreliable due to rampant illegal logging and systemic corruption in the forestry industry. Import values into markets completely dominated and distorted by production borne of illegal timber trade cannot reasonably constitute the best available information.

Fine Furniture:

- The Department correctly determined in the preliminary results that the Philippine import data for HTS category 4408.90.1000, representing "Face Veneer Sheets," are the best information available to value NCNT face veneer inputs because those data are from the primary surrogate country, readily available and demonstrably reliable. There is, therefore, no need to resort to secondary country data or international market data.
- In the preliminary results the Department compared the Malaysian import AUV to AUVs of veneer imports into the other potential surrogate countries on the Office of Policy list and found that the data from these other countries corroborated rather than discredited the Malaysian value.
- Benchmarks suggested by CAHP to demonstrate that the AUV for Philippine imports of Malaysian NCNT face veneer is aberrationally low fail to provide a useful comparison and are not probative of whether the AUV for NCNT face veneer imports into the Philippines, whether from Malaysia or elsewhere, is an outlier.

- The SICEX and Finewood Ventech data proposed by CAHP have too many flaws and irregularities and not enough market coverage to provide the kind of contemporaneous, publicly available import data that represent broad market averages specific to the data in question.
- The face veneer input in the instant review is not analogous to the polysilicon input in Solar Cells. Unlike the highly specific type and purity of the single type of polysilicon used in solar cells, multiple types of face veneer that come in a wide variety of species, quality and cuts are used to make MLWF.
- The Department should reject CAHP's argument that to avoid a purported conflict of interest POR imports from Malaysia into the Philippines cannot be used because they were exported by an affiliate of Samling Group.

Minglin:
- To value Minglin's species-specific veneers by using the import prices for NCNT veneers from Colombia, Ecuador, and/or Peru runs counter to the Department's long standing practice of using broad market averages from a single surrogate country, and CAHP provides no basis for relying on a smorgasbord of countries that represent insignificant transactions. Additionally, the record evidence submitted by CAHP does not appear to support the species-specific veneer cited by Petitioners for Minglin's reported face veneers.
- The Finewood Ventech values do not meet the most basic requirement that the Department use surrogate values obtained from a comparable economic country. Not only is it the Department's practice to not use such values for valuing a respondent's factors of production, but it is the Department's long-standing practice not rely on prices as benchmarks from countries that are not economically comparable the NME country.
- CAHP provided no evidence for its claim that the imports from Malaysia are unusable for use as a surrogate value. Moreover, historical import data, dating back to May 2009, from Malaysia to the Philippines, which predates the filing of the petition and the order, and indicates that no party has tainted the pricing for the purpose of this review.
- The use of respondents' purchases of NME-sourced veneers is not suitable given the price controls in the non-market economy, and does not meet the standard of public information consistent the Department's practice. Furthermore, CAHP's argument to use the median AUV for imports from all surrogate countries on the Office of Policy list to value respondents' face veneers is equally unsustainable.

Department's Position: For the final results, the Department continues to value NCNT face veneers using Philippine imports under HTS subheading 4408.90.1000 ("Face Veneer Sheets"). This is consistent with the preliminary results, and with the Department's final determination in the investigation.

The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[146] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-

[146] *See Lightweight Thermal Paper* and accompanying IDM at Comment 9.

exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[147] As established in the preliminary results, the Department continues to find that the Philippine import data obtained from GTA are publicly available, broad market averages, contemporaneous with the POR, tax-exclusive, and specific to the input in question, satisfying the critical elements of the Department's SV test.

CAHP presented a number of different benchmark prices and alternative SVs that purportedly demonstrate that the Philippine import value is aberrational and inappropriate to use to value the NCNT face veneers used by respondents in the production of the subject merchandise. When a party claims that a particular SV is not appropriate to value a certain FOP, the burden is on that party to provide evidence demonstrating the inadequacy of the SV.[148] As explained below, we find that CAHP failed to provide convincing evidence of the inadequacy of the Philippine import data or that another value is more appropriate.

As an initial matter, we note that CAHP does not argue that HTS category 4408.90.1000 is not the correct category to value NCNT face veneer. Instead, CAHP claims that the Malaysian exports to the Philippines under 4408.90.1000 are not similar to the species of the NCNT face veneers used by respondents. CAHP submits that the Philippine import data are flawed and, therefore, should not be used to value face veneers. After evaluating whether CAHP demonstrated that use of the Philippine import data is inappropriate, the Department disagrees that CAHP has shown the data to be unreliable. We address each of CAHP's arguments below.

First, CAHP suggests that respondents' ME and NME purchases of NCNT face veneers provide benchmarks demonstrating that the Philippine import values are unreasonably low; however the Department has consistently declared that ME and NME purchase prices are unsuitable as benchmarks because these prices are proprietary information of the respective companies, and are not necessarily representative of industry-wide prices available to other producers. Therefore, they do not meet the Department's preference for publicly available information.[149] The Department also finds prices paid to NME suppliers to be unreliable by their very nature and, therefore, inappropriate for use as a benchmark.[150]

Despite the Department's explanation in the preliminary results that Philippine imports under HTS code 4408.90.1000 are not unreasonable and, moreover, that record evidence demonstrates that Philippine imports from Malaysia, specifically, are not unreasonable, CAHP continues to claim that the Philippine import value is aberrational when compared to the numerous benchmark prices on the record. For instance, CAHP states that the benchmark prices it placed on the record of this review are evidence that there exist significant variations in veneer prices. The Department agrees that the record contains evidence of variations in veneer prices, but many of these prices are not appropriate for use as either benchmarks or SVs, and many are also not

[147] *See, e.g., TRBs* and accompanying IDM at Comment 6.
[148] *See TRBs* at Comment 6; *see also Carrier Bags* and accompanying IDM at Comment 6.
[149] *See Hot Rolled Carbon Steel Romania* and accompanying IDM at Comment 5 ("{T}he fact that the . . . information is proprietary makes it the sort of information we normally would not use as a surrogate value."); *see also Plywood Final* and accompanying IDM at Comment 7C.
[150] *See Narrow Woven Ribbons* and accompanying IDM at Comment 2.

specific to face veneers, the input being valued. This wide variance of veneer prices based on inappropriate benchmarks and/or prices not specific to face veneers, is precisely why the Department continues to find the Philippine import value to be reliable. The Philippine import data are the only information on the record that are publicly available, broad market averages, contemporaneous with the POR, tax-exclusive, and specific to the input in question, with the added advantage of being from the primary surrogate country.

The Department finds that it cannot reasonably compare HTS categories from other potential surrogate countries because none has a category specific to face veneers, like the Philippines. Instead, the broad categories for the other countries may contain different products. Tariff schedules are harmonized among countries only up to the six-digit level, so attempting to compare Philippine imports under 4408.90.1000, which is specific to face veneers, to the broader six-digit category 4408.90, or to an eight-digit "other" basket category is not the most reliable yardstick against which to measure the reliability of the Philippine data.[151] In spite of the fact that the import data from other countries are not specific to the input being valued, in keeping with its normal practice,[152] the Department compared the values and determined the Philippine value to be at the low end of a broad range of values.[153] This is not a valid basis for rejecting the Philippine data.[154] Indeed, the courts have affirmed the use of an SV that is the lowest value on the record where it is not an outlier, but simply the low end of a range, as is the case here.[155] In the preliminary results, having already satisfied itself that the Philippine import value, including the Malaysian data, was within the range of values from the other potential surrogate countries, the Department responded to CAHP's argument that the Malaysian value is unreliable by conducting an additional test. This additional test, in which the Department compared the Malaysian value to the values of veneer imports into the other potential surrogate countries, is not the Department's normal practice. As a result of this additional test, the Department found based on record evidence that the "there are several other values at or very near to the Malaysian value."[156] Although CAHP emphasizes the fact that few of the individual line items of imports into the potential surrogate countries are lower than the value of the Philippine imports from Malaysia, the court has upheld the Department under similar circumstances in which a party argued that a particular line item should be excluded as aberrant. In that case, the court

[151] The Department compared the Philippine import data under 4408.90.1000 to the six-digit category for Colombia, Costa Rica, and Indonesia, and to an eight-digit "other" category for South Africa and Thailand. *See* Surrogate Value Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China. In addition, the SICEX data placed on the record by CAHP for Colombia, Ecuador and Peru is also limited to the broad six-digit category 4408.90.

[152] *See, e.g., Hot Rolled Carbon Steel Romania* and accompanying IDM at Comment 2, where the Department explained that to test the reliability of surrogate values alleged to be aberrational, it is appropriate to compare the selected surrogate value to the AUVs calculated for the same period using data from the other designated surrogate countries.

[153] *See* CAHP's June 3, 2013 SV rebuttal comment at exhibit 5, which includes relevant import data for all potential surrogate coutries.

[154] *See Camau Frozen Seafood* (the court explained that the plaintiff offered no "basis for finding the Bangladeshi labor values aberrational beyond the fact that the Bangladeshi values are the lowest on the record. Furthermore . . . the Bangladeshi labor values are not significantly different from most or all of the other values on the record.") Thus, the court found that "the Bangladeshi data is not aberrational, it is merely the lowest price in a range of prices."

[155] *See id.*

[156] *See* Prelim SV Memo at 5.

explained that "the Department showed that the Omani value was not aberrational, even though it was the lowest value within the Indian import dataset, because it was higher than other potential surrogate values."[157] In finding no basis for the exclusion of the particular line item in question, the court stated that "while the Omani data itself was at the low end of the range of all potential surrogate values on the record, it was not the lowest value."[158] As stated above, the value of the Philippine imports from Malaysia are not the lowest veneer prices on the record, but even if they were, this would not in and of itself designate them as aberrational. Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier.[159]

Not satisfied with the Department's explanation in the preliminary results, CAHP continues to charge that the Malaysian value is tainted because the merchandise is exported from Malaysia by an affiliate of the Samling Group, an interested party in this proceeding. Recognizing that in the preliminary results the Department stated that there was no record evidence that the value of Philippine imports from Malaysia are distorted by virtue of any individual company's involvement in the exportation from Malaysia, CAHP maintains that such a finding is inconsistent with the record evidence for this administrative review which shows that all Philippine imports of NCNT veneers from Malaysia during the POR were from the Samling Group, and that the weighted-average AUV for all other imports of NCNT veneers of $5.30/kg was 37 times higher than the Samling Group AUV of $0.14/kg. Finally, CAHP asserts that the Department's decision to not exclude Philippine imports from Malaysia is contrary to the Department's determination in *Hot Rolled Carbon Steel Romania*, where the even the potential of a conflict of interest without a finding of irregularities or improprieties constituted a sufficient basis for the rejection of such data. In making this final point, CAHP attempts to tie the low value of face veneer imported from Malaysia by the Philippines with the fact that the Malaysian exporter is purposely driving the prices down in order to influence the margin calculations.

Before addressing CAHP's final point alleging a possible conspiracy to manipulate Philippine import values of face veneers, we reiterate that in the preliminary results the Department responded to CAHP's allegations by comparing the aggregate Philippine import AUV of face veneers with that of other potential surrogate countries, which is the Department's normal test in such circumstances In *Hot-Rolled Steel from Romania*, the Department acknowledged inconsistencies in its past practice, and articulated a hierarchy for testing surrogate values alleged to be aberrational: "To test the reliability of the surrogate values alleged to be aberrational, we compared the selected surrogate value for each FOP to the AUVs calculated for the same period using data from the other surrogate countries the Department designated for this review, to the extent that such data are available."[160] Consistent with the practice articulated in *Hot Rolled Carbon Steel Romania*, and further emphasized in *Lined Paper* at comment 5,[161] applying this

[157] *See Clearon* at 20.
[158] *See id*.
[159] *See*, *e.g.*, *Cased Pencils 06/07* and accompanying IDM at comment 6 ("While . . . the Department will not use unreasonable and aberrant surrogate values in the calculation of normal value and will examine all surrogate values for reasonableness, the Department does not consider the reasonableness of a surrogate value can be demonstrated solely by comparing how high or low it is relative to other unit values in the data.").
[160] *See Hot Rolled Carbon Steel Romania* and accompanying IDM at Comment 2.
[161] *See Lined Paper* and accompanying IDM at Comment 5, explaining that the Department's current practice is "to benchmark surrogate values against imports from the list of potential surrogate countries for a given case."

same methodology in the preliminary results of the instant review, we compared the aggregate Philippine import value of face veneers with that of other potential surrogate countries (Colombia, Costa Rica, Indonesia, South Africa and Thailand) and found the Philippine import value is at the low end of a wide range of values for those countries, noting also that none of those other countries offered an HTS category specific to face veneers. This also comports with the Department's stated practice that it is "preferable to benchmark selected surrogate values against AUVs derived from the same data source."[162] In other words, as explained above, we compared GTA import values for all of the potential surrogate countries and found the Philippine values to be within the range, albeit at the low end, of the AUVs from the other potential surrogate countries. As the Philippine import value for face veneers is within the range of prices for veneers on the record of this review, we find no evidence that such prices are aberrational or otherwise unsuitable for use as a surrogate value.

Referring to the various prices it placed on the record to demonstrate the great variance in veneer values, CAHP attributes variations in veneer prices primarily to differences in species, quality, and cutting method, but also to the form in which the veneer is purchased, *i.e.*, veneer sheets versus custom cut-to-size veneers.[163] As an alternative to the Philippine GTA data used by the Department in the preliminary results, CAHP suggests the use of alternative prices because the Philippine GTA data under 4408.90.1000 "and the import data for NCNT veneers in the other surrogate countries encompass imports of unspecified species, qualities, cutting methods and forms."[164] Attempting to draw a parallel with the *Solar Cells* investigation, CAHP submits that in *Solar Cells* the Department faced similar facts and issues regarding a wide variance of values, and determined that international prices were the best available information with which to value polysilicon.[165]

We find that CAHP's attempt to compare the issue of the proper SV for face veneer with the issue of the proper SV for polysilicon in *Solar Cells* misses the mark. Actually, an examination of the facts involved in both cases reveals them to be quite dissimilar. Whereas in the instant review, as explained above, the Department has on the record a contemporaneous face veneer SV that is publicly available, non-export, tax-exclusive and, importantly, product-specific. In *Solar Cells*, the Department explained that "there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries,"[166] resulting from the fact that "imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, <u>neither of which is the input being valued</u>"[167] (emphasis added). Contrary to *Solar Cells*, where the Department determined that extreme variations in AUVs were caused by the inclusion within the import data of products that differed significantly from the input being valued, the Philippine import data used in the preliminary results of this review are specific to the input being valued. As a matter of fact, it is the only source from any surrogate country that is specific to face veneers.

[162] *See id.*
[163] *See* CAHP case brief at 12.
[164] *See* CAHP case brief at 13 – 14.
[165] CAHP cites *Solar Cells.*
[166] *See Solar Cells* and accompanying IDM at Comment 24.
[167] *See id*.

Arguing that the variance in face veneer prices is primarily due to differences in species, CAHP posits the use of species-specific prices to value face veneer. Using CAHP's proposed alternative prices would mean using prices that are less specific to the input being valued, not from the selected surrogate country, not broad market averages and, in many cases, not contemporaneous to the POR. "Such an approach to selecting an SV would be inconsistent with the Department's practice of choosing SVs based on the best information available for valuing a particular input."[168] Clearly, whereas the Philippine import category 4408.90.1000 is specific to face veneer, none of the alternative SVs offered by CAHP comes close to meeting the Department's criteria for selection as the best information available with which to value face veneer.

In light of its endorsement of species-specific prices and a further attempt to discredit the Philippine import data, CAHP implies that Malaysian exports to the Philippines are of species different than those used by the respondents. As support, CAHP provided information from the Malaysian Timber Counsel's web site listing the physical properties of "Popular Malaysian Timber."[169] This information is unpersuasive for several reasons. First, the information provided by CAHP makes no reference of veneers, nor does it make any reference to exports. To draw any conclusion between this information and the merchandise imported from Malaysia by the Philippines under HTS category 4408.90.1000 is purely speculative and unsupported by any record evidence.

Regarding its suggested species-specific prices, CAHP first proposes that the Department use species-specific prices based on a patchwork of SICEX data[170] for Colombia, Ecuador and Peru,[171] arguing that each company meets the criteria for consideration as a surrogate country.[172]

Respondents maintain that the SICEX data are seriously flawed, and we agree. We agree with Fine Furniture that the SICEX data that are outside the POR should be rejected because there are other SV data on the record that are contemporaneous to the POR. Also, we agree with Minglin's claim that using the species-specific values from SICEX would require that the Department depart from its long-standing practice of using broad market averages from a single surrogate country, which is also directed by the Department's regulations at 19 CFR 351.408(c)(2) (the Department "normally will value all factors in a single surrogate country"), and has been upheld by the courts.[173] We also agree with Minglin that CAHP fails to support its suggestion that values from a "smorgasbord of countries that represent insignificant transactions" represent the best available evidence with which to value respondents' face veneer inputs. This

[168] *See* id.
[169] *See* CAHP's December 18, 2013 SV submission at exhibit 1.
[170] CAHP states that the customs authorities of Colombia, Ecuador and Peru make there detailed customs information available to the public, and Quinteros Hermanos Ltd., through its website www.sicex.com ("SICEX"), is a third-party distributor of this data. CAHP claims that "the customs import data for NCNT veneers from SICEX for these three countries is identical or nearly identical to the official import data for these countries as reported by Global Trade Atlas." CAHP case brief at 17.
[171] *See* CAHP case brief at exhibit 13.
[172] *See* CAHP's April 23, 2013 comments on surrogate country selection at exhibit 2 showing economic comparability and exhibit 3 showing significant production of comparable merchandise.
[173] *See Clearon* at 13 ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced" into {the Department's} calculation.")

is because, as stated above, only the Philippine import data from GTA are specific to face veneer. To the extent that the SICEX data can be matched to GTA data at all, the SICEX data for Colombia, Ecuador and Peru match to the GTA data for the broad HTS category 4408.90. Consequently, there is no evidence as to how much, if any, of the SICEX data cover face veneer.

According to Fine Furniture, the SICEX data are also not reliable under the Infodrive India test.[174] Fine Furniture submits that rather than supporting the use of SICEX data, attachments to CAHP's case brief highlight how unreliable the data are compared to official statistics obtained from GTA. We agree with Fine Furniture. We note that the SICEX data for Ecuador and Peru do not account for 100 percent of imports as reported by GTA. Specifically, CAHP's case brief at attachments 8A and B show for Peru, a difference of $30,887 and 2,515 kg between the SICEX and GTA data, and for Ecuador, a difference of $98,354 and 13,940 kg between the SICEX and GTA data. The Department prefers not to use third-party import data where those data do not account for 100 percent of the imports reported by the official import statistics.[175] In addition, we agree with Fine Furniture that CAHP's case brief at attachment 8B shows that the SICEX data for Ecuador also reports different countries of origin than the official GTA data. Specifically, the SICEX data do not include import data for Columbia, South Korea and Romania, whereas the GTA data include imports from those countries; and the SICEX data include imports from Belgium, India, Papua New Guinea, Brazil and Georgia, countries not reported in the GTA data.

Fine Furniture argues that the actual source of the SICEX data is not clear from a review of exhibit 5 of CAHP's December 18, 2013 submission of SV information, and we agree. The Department has rejected third-party import data collected from a limited number of individual ports, which could be described as "customs," because such information is not representative of the range of POR prices.[176] It is unclear how SICEX collects its data, how it reports the data, and whether SICEX either manipulates the data or fails to capture post-entry corrections reflected in the official government data. One thing that is clear, however, is that, as discussed above, record evidence indicates that the SICEX data clearly do not match the official government data as reflected in GTA.

Even more problematic though, as discussed above, is that the SICEX data are not specific to face veneer, the input being valued, and that much of the data are from outside the POR. Fine Furniture points out that only four entries in the SICEX data, rows 19 and 258 in attachment 9 of CAHP's case brief, and rows 5 and 243 in attachment 11, are arguably described as face veneer

[174] Fine Furniture claims that the Department will only use third-party import data for a chosen surrogate country when "(1) there is direct and substantial evidence from {the third-party source} reflecting the imports from a particular country; (2) a significant portion of the overall imports under the relevant HTS category is represented by the {third-party} data; and (3) distortions of the AUV in question can be demonstrated by the {third-party} data," citing *Silicon Metal* and accompanying IDM at comment 5; and *Dorbest* (continuing the Department's decision to reject Infodrive data "because they fail to account for a significant percentage of imports reported under the HTS subheading{,} are not reported in a uniform, measurable quantity{,} excluded data from several countries{, show incomplete} imports for all but two countries {and were} not reliable because of the multiple units of measurement.")
[175] *See, e.g.*, *Diamond Sawblades LTFV Final* and accompanying IDM at comment 11 E ("{T}he Department prefers not to use Infodrive data to derive surrogate values because it does not account for all of the imports which fall under a particular HTS subheading.").
[176] *See OTR Tires* and accompanying IDM at comment 14.

because they include the word "face" in the product description field; however, these items represent either species that are not used by any of the respondents or are from an NME and, therefore, are not included in CAHP's suggested species-specific SVs. Thus, we agree with Fine Furniture that it matters little that the prices may be for specific species if they are for the wrong input. Furthermore, the SICEX data fail to stand up to scrutiny as species-specific prices, the purported use for which CAHP intended them in the first place. Even if we overlook the myriad other problems already discussed in detail above, the SICEX data, as proposed by CAHP, yields only a few species-specific prices based on an insignificant number of transactions. Moreover, CAHP proposes combining red oak, white oak and oak as a single species, and combining walnut and Chinese walnut as a single species, further tarnishing the already dubious prices obtained from the SICEX data, not to mention that combining species in such a manner contradicts CAHP's whole argument of the importance of applying species-specific prices.

With respect to Fine Furniture, it reported 13 species of NCNT face veneers to which the Department assigned a surrogate value in the preliminary results; CAHP suggested using the SICEX data for only three of those inputs: Chinese maple, eucalyptus and white oak. First, we find that the value for eucalyptus is based on third-party data from Ecuador which cannot be corroborated with the official government data obtained from GTA, leaving only Chinese maple and white oak. Next, close inspection of the thousands of lines of printout submitted in more than a hundred pages of attachments to CAHP's case brief reveals that only a single transaction of white oak from Colombia and a single transaction of Chinese maple from Peru can even arguably be related to Fine Furniture's species of NCNT face veneer inputs.

Were we to entertain the idea of SICEX data from outside the POR, we face the same problems. To mention one example, the proposed value for Chinese maple is based on one Peruvian import of maple. Thus, CAHP's proposed species-specific price is not specific to the species, not specific to the input (face veneer), and not contemporaneous to the POR.

The same problems hamper consideration of CAHP's proposed species-specific prices as they relate to the all of the respondents. For example, CAHP submitted 379 rows of SICEX data for Colombia, 419 rows of data for Ecuador, and 310 rows of data for Peru, but relied on only four data points for Colombia, six for Ecuador and eight for Peru as being applicable to Armstrong's species of face veneer inputs. Further, the extremely limited data points used are often not even for the species being considered. For instance, of four Colombian imports used to value white oak, three of the entries are actually "rose oak wood," not white oak.[177] To value ash, Chinese walnut and walnut veneers, CAHP relies on two Peruvian customs entries each. The proposed beech surrogate value is based on one customs entry for Ecuador. Given the paucity of information that CAHP actually uses to calculate purported species-specific prices, it comes as no surprise that for most of the species reported by the respondents, CAHP proposes no species-specific prices, despite trying to sell the notion of the importance of using species-specific prices. Of those for which CAHP did propose a species-specific price, many are based on prices pertaining to different species, not to mention the fact that perhaps none are related to face veneers, because the SICEX data are not specific to face veneers.

[177] *See* CAHP's case brief at attachments 9 (SICEX data for Colombia), 10 (SICEX data for Ecuador) and 11 (SICEX data for Peru).

Respondents also urge the Department to reject the SICEX data from Ecuador, Colombia, and Peru on the basis that it is tainted by evidence of illegal logging. According to respondents, illegal logging affects the domestic market of each of these countries and the exports penetrating these markets are necessarily affected by a market distorted by illegal logging. While we acknowledge the information submitted by respondents regarding investigations of illegal logging in Colombia, Ecuador and Peru,[178] the Department is not convinced that there is evidence linking investigations of illegal logging to the value of imports into these countries under HTS code 4408.90. However, notwithstanding that the Department does not agree with this argument and for the reasons discussed above, the Department finds that the SICEX data should be not be used as SVs and the Philippine imports under HTS code 4408.90.1000 remain the best available information, specific to the input being valued.

As an alternative to the SICEX data, CAHP next suggests that the Department use prices obtained from species-specific price lists posted on the web site of Finewood Ventech, an Australian-based distributor of natural timber veneers and other wood products. According to CAHP, the price list is from February 10, 2010.

First, as explained above, the Department finds that the record of the instant review contains SV data from a Philippine HTS category which is sufficiently detailed[179] to permit valuation for the NCNT face veneer input without resorting to international prices. Therefore, unlike *Solar Cells* in which the Department determined that a comparison to international prices was appropriate, such a comparison is unnecessary in the instant review. Moreover, even if we were to use an alternative SV, the Finewood Ventech information is not appropriate. Finewood Ventech is an Australian company and Australia is not economically comparable to the PRC or to the countries considered as potential surrogates and, as a result, its use as a price or as a pricing benchmark is inappropriate.[180] In addition, the prices are from 2010[181] and, thus, are not contemporaneous to the POR, and they represent prices from a single source,[182] as opposed to a broad market average, as is the Department's preference.

Finally, we do not agree with CAHP that we should exclude imports from Malaysia because Philippine imports from Malaysia were sourced from an interested party. CAHP made the same argument in the *Plywood* investigation, where the Department explained "there is no evidence on the record that the sales made were not arm's length transactions."[183] The Department further explained that even if it were to find the data placed on the record by CAHP to be reliable, it did not support any of CAHP's claims that the Philippine data were unreliable.[184] Likewise, in

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[178] *See, e.g.*, Armstrong's post preliminary SV rebuttal comments, at Exhibit 3.
[179] Philippine HTS category 4408.90.10 contains "Face Veneer Sheets."
[180] *See, e.g., Steel Plate from Romania* at Comment 11 ("Although the Department has in the past used non-surrogate country data as a benchmark to determine the reliability of surrogate data, the purpose of such test is not to demonstrate that differences exist, but rather to determine whether surrogate data is distorted or otherwise unreliable under certain specific circumstances. . . . The Department used U.S. import data as a benchmark because the U.S. HTS subheading was the only HTS customs subheading specific enough to capture an appropriate bearing-quality steel import value. These data were then used to gauge the reliability of the less-specific Indian import values.").
[181] *See* CAHP's December 18, 2013 SV submission at exhibit 10.
[182] *Id*.
[183] *See Plywood Final,* 78 FR 58273 (September 23, 2013) and accompanying IDM at Comment 7C.
[184] *See id.*

addressing these allegations in the preliminary results, the Department explained that it found "no record evidence that the value of Philippine imports from Malaysia are distorted by virtue of any individual company's involvement in the exportation from Malaysia."[185] Since the preliminary results, CAHP provided no additional information to support its allegations. Accordingly, we continue to find that there is no evidence to indicate that the exports from Malaysia to the Philippines were not made at arm's length.

Regarding CAHP's reference to *Hot Rolled Carbon Steel Romania*, the Department in that case declined to use surrogate financial statements from a company affiliated with a respondent to the review. In doing so, the Department explained that "for purposes of insuring impartiality in our selection of surrogate values and financial ratios, we prefer a neutral source over a surrogate value or ratio from an entity that for any reason has a stake in the outcome of the review and which is not subject to verification."[186] Unlike the referenced case, in the instant review the Department is using Philippine import data obtained from GTA, based on official statistics reported by the Philippine government, not a party to this proceeding. Furthermore, even if we are to entertain CAHP's argument, CAHP's allegations are based on the highly speculative and improbable notion that an affiliate of the Samling Group, a separate-rate respondent in this review, exported face veneer sheets from Malaysia to the Philippines at unusually low prices to drive down surrogate values in the event that there would be an administrative review of the multilayered wood flooring order even though none had yet to be requested and on the further chance that the Department would select the Philippines as the surrogate country in that yet to be requested review.

As a result, we continue to value face veneer using Philippine imports under HTS code 4408.90.1000, and to include in the Philippine GTA data the imports from Malaysia. As explained above, the relevant test is to determine whether the AUV in the aggregate is aberrational. Otherwise, parties would advocate the manipulation of data by removing one or more line items they find objectionable, as CAHP attempts to do with the imports from Malaysia, with the result that we would not be using the average prices for that category, but some subset thereof. Where a party is able to demonstrate that the AUV for an entire category is aberrational or otherwise unreliable, the Department will reject that particular category and use another surrogate value.[187] Nevertheless, in response to CAHP's arguments that the Philippine imports from Malaysia are unreliable, we have shown that the evidence does not support CAHP's claims.

Comment 7: Surrogate Value for Wood Scrap By-Product

CAHP:

- Using Philippine import data under PSCC headings would yield an unreasonably high surrogate value and the Department should continue to reject their usage.
- The Department should value by-products with domestic fuel wood prices from the Philippines Forest Management Bureau ("FMB") 2011 Philippine Forestry Statistics.

[185] *See* Prelim SV Memo at 5.
[186] *See Hot Rolled Carbon Steel Romania* and accompanying IDM at comment 7.
[187] *See, e.g., id.; see also Steel Plate from Romania* and accompanying IDM at Comment 11.

- The respondents indicate that they typically use their wood scrap for fuel wood in their boilers; therefore the Department should use a value that is based on fuel wood, particularly FMB fuel wood.

Armstrong:

- Armstrong reported two types of by-product: (1) wood scrap used to heat its boiler, which is not tracked by the company and for which Armstrong claimed no offset; and (2) the by-product for which the company sought an offset is wood scrap that is sold, which Armstrong claims is not fuel wood and should be valued differently than fuel wood.

Department's Position: The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[188] When doing this, the Department's practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[189] For purposes of valuing the respondents' wood scrap by-products in this review, we find that the most appropriate SV information on the record is Philippine HTS 4401.30. This category, which includes the terms "sawdust" and "scrap,"[190] matches the description of the wood scrap reported by Armstrong for which they are requesting a by-product offset. However, the HTS description is not the only relevant factor for the Department to consider.[191]

As explained in *Nails Final Determination* and in the *Wood Flooring LTFV Final*, the Department disregards a surrogate value when it is clear that the selection of that surrogate value would yield an unreasonable result.[192] In this case, as was the case in *Nails Final Determination* and the *Wood Flooring LTFV Final*, we find that the valuation of a scrap by-product with a surrogate value higher than the inputs into that scrap product would produce an unreasonable result not explained by the record. Specifically, because the AUV of Philippine HTS 4401.30 is higher than the surrogate values used for some of the respondents' wood inputs, for the preliminary results, we used the "wood scrap" HTS code 4401.30, which is specific to the FOP being valued, but capped it by the AUV price of HTS code 4408.90.1000 "Face Veneer Sheets."

CAHP argues that the scrap by-product should be valued as fuel wood, using domestic fuel wood prices it placed on the record for this purpose. We do not agree with CAHP's claim that the domestic Philippine fuel wood prices are more specific to the wood waste generated by the respondents; clearly not for the wood scrap from which Armstrong is requesting a by-product offset. Instead, CAHP appears to be conflating the different types of scrap reported by the respondents. Armstrong reported that it does not track the quantity of scrap that is generated

[188] *See Lightweight Thermal Paper* and accompanying IDM at Comment 9.
[189] *See id.*
[190] *See* Letter to the Department from CAHP (June 3, 2013) at Exhibit 23.
[191] *See, e.g., Nails Final Determination* at Comment 12.
[192] *See also Final Determination Pursuant To The Remand Order From The U.S. Court Of International Trade In Paslode Division of Illinois Tool Works, Inc. v. United States*, Ct. No. 97-12-02161 (January 15, 1999), (the Department stated that "It is clear that our steel scrap value selection produced an unreasonable result – a value for steel wire rod scrap (0.8390 USD/kg) that exceeded the price for steel wire rod (0.3119 USD/kg) – one that cannot be explained by any notes or data . . .").

during production and subsequently consumed as an energy input,[193] nor has any respondent in this review requested an offset for any scrap that it generates and subsequently uses as an energy input. All of the scrap by-product that Armstrong requested an offset for is sold.[194] The description of the scrap that is sold closely matches the description of HTS category 4401.30 which, as explained above, includes sawdust and scrap and is specific to the scrap by-product reportedly sold by Armstrong. Armstrong asserts that it does not sell it as fuel wood, and there is no record evidence supporting CAHP's claim that the wood scrap is used as fuel wood; furthermore, it would not be possible to determine the ultimate use of the scrap in any event. Consequently, for the final results, we continue to value Armstrong's scrap using the "wood scrap" HTS code 4401.30 capped by the AUV price of the face veneer input.

Comment 8: Surrogate Value for Melamine Formaldehyde Resin Adhesive

CAHP:

- The Department should use Harmonized Tariff Schedule ("HTS") category 3506.91.0000 to value glue for Armstrong.
- In the *WBF 2009 Final Results*, the Department used HTS category 3506.10.0000 to value glue due to the volume of glue purchased by one of the respondents, which would not qualify it for "retail sale."
- HTS category 3506.91.0000 is defined as "adhesives based on polymers of headings 3901 to 3913 or on rubber," which includes Armstrong's classification of their glue under HTS category 3909.

Armstrong:

- Goods that fall into HTS category 3506 are more prepared than those in HTS category 3909.
- While HTS category 3506 contains preparations specially formulated for use as adhesives consisting of polymers or blends thereof of HTS categories 3901 to 3913, these contain other added substances not falling into that chapter (*e.g.*, waxes).
- Only fillers, hardener and water are added to the powder resin to turn it into a dispersion, a liquid form that is included among the primary forms specified in Note 6 to Chapter 39.

Department's Position: The respondent Armstrong reported glue as an input in its production of wood flooring. Armstrong described its glue as adhesive glue made up of the following: melamine formaldehyde resin (in powder form), organic filler with anticaking agent silicic acid, aluminum sodium salt (also referred to as sodium aluminum silicate), and a hardener comprised of kaolin filler, acid for PH balancing, and water emulsion.[195]

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[193] *See* Letter to the Department from Armstrong (May 17, 2013) at Exhibit D-17.

[194] *See* Letter to the Department from Layo Wood (May 13, 2013); *see also* Letter to the Department from Armstrong (May 17, 2013).

[195] *See* Letter to the Department from Armstrong, regarding "Supplemental A & D Questionnaire Response Administrative Review – Armstrong Wood Products (Kunshan) Co., Ltd.," (July 12, 2013) at Exhibit S-9; *see also* Letter from Armstrong to the Department, regarding "Rebuttal Brief of Armstrong Wood Products (Kunshan) Co., Ltd." (January 22, 2014).

Regarding HTS subheading 3909.20.9000 and 3506.91.000, both represent a broad market average, are publicly available, are exclusive of taxes and duties and are contemporaneous with the period of review. However, the HTS classifications differ on product specificity as it relates to the specific inputs reported by the respondents. After analyzing the information provided by interested parties, the Department determined that HTS category 3909.20.9000 is appropriate to value melamine resin, which is an input into the type of glue reportedly used by Armstrong. In contrast, 3506.91, described as adhesive glues based on polymers of headings 3901 to 3913 or on rubber,[196] is appropriate to value finished glues based on melamine resin as an input (because melamine resin, under code 3909 is covered by the description of adhesive glues under code 3506.91).

Armstrong reports purchasing melamine resin in powder form and combining it with fillers and additives to create a prepared and finished glue adhesive,[197] which would suggest that 3909.20.9000 is appropriate for valuing the melamine resin that is an input into the production of the glue itself. However, 3909.20.9000 represents the melamine resin and does not include the other inputs added to the melamine resin to produce the finished glue adhesive. Therefore, to value the respondents' glue with HTS category 3909.20.9000, as endorsed by Armstrong, fails to account for the full value of the finished glue because it disregards the value of the other inputs that are mixed with the melamine resin.

Although Armstrong described its glue as an unprepared melamine-based resin that is mixed with fillers and additives, these inputs were not separately provided to the Department.[198] Because we are unable to account for the cost of these other inputs, we determined to value Armstrong's glue with 3506.91.0000 in order to account for the cost all of the inputs used by Armstrong to produce finished adhesive glue.[199] As an alternative to using 3909.20.9000, Armstrong provided to the Department the chemical composition of its glue and suggested valuing the various parts.[200] However, Armstrong did not report any consumption ratios for these glue components in its FOP database. Therefore, we are unable to consider this method to value Armstrong's adhesive glue.

Finally, CAHP argued that in the underlying investigation the Department incorrectly interpreted HTS code 3506 as being restricted to merchandise with a net weight not exceeding 1 kg. According to CAHP, this weight reference applies only to subheading 3506.10, "Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg."[201] Upon further consideration, we agree. The reference to net weight not exceeding 1 kg is restricted to subheading 3506.10.[202] There is no reference to weight contained in subheading 3506.91, the category that is specific to "Adhesives based on polymers of

[196] *See* Letter to the Department from CAHP (June 3, 2013) at Exhibit 23
[197] *See* Letter to the Department from Layo Wood (July 29, 2013); *see also* Letter to the Department from Armstrong (July 12, 2013).
[198] *See* Letter to the Department from Armstrong (July 12, 2013); *see also* company-specific analysis memorandum and FOP database.
[199] *See* Armstrong final results analysis memo.
[200] *See id*, at Exhibit S-9.
[201] *See* CAHP's case brief at 5.
[202] *See* Letter to the Department from CAHP (June 3, 2013) at Exhibit 23

headings 39.01 to 39.13 or on rubber."[203] Accordingly, we find this to be the appropriate category with which to value Armstrong's glue input in order to account for not only the value of melamine resin contained in HTS category 3909, but all of the other material inputs added to the melamine resin, which Armstrong did not report separately.

Comment 9: Whether the Surrogate Value for Core Veneer is Appropriate

Fine Furniture:

- In the preliminary results, the Department was unreasonable in using HTS subheading 4408.90 to value Fine Furniture's core, or "base," veneers of poplar core veneer, eucalyptus core veneer and beech core veneer.
- HTS subheading 4408.90 is not specific to Fine Furniture's core veneer and results in a core veneer value that exceeds the value for face veneer for the same species, which is contrary to the commercial reality of the manufacture of wood flooring.
- Fine Furniture's core veneers are properly classified under Philippine HTS subheading 4408.90.90-06, which is the HTS subheading for "sheets for plywood." Fine Furniture consumes non-coniferous, non-tropical ("NCNT") core sheets in the production of subject merchandise. On the other hand, HTS subheading 4408.90 is a general category providing for "Other Non-coniferous Veneer Sheets ... Other ... Other" that includes other tariff codes beyond the specific "sheets for plywood."
- Since the data for HTS subheading 4408.90.90-06 is not contemporaneous with the POR, the Department would be justified in inflating the value for said HTS subheading because the Department has a practice of using inflated non-contemporaneous surrogate value information, when a value is considered to be the best available information on the record.[204]

CAHP:

- The Philippine import data under sub-heading 4408.90.90-06 are unreliable and unsuitable to value respondents' core veneers because such data are not contemporaneous, do not represent a broad market average, and are for a completely different product; namely, rolls of laminated sheets.
- In the Preliminary Results of *Pure Magnesium*, the Department rejected the use of South Africa as a surrogate country, because South African import data for the primary input "consist only of import data from a single month prior to the POR, and thus, do not fulfill our preference for contemporaneous broad market average information."[205]
- The Department should not use HTS heading 4408.90 to value Fine Furniture's base veneers because this heading improperly includes face veneers. Instead, the Department should use Philippine import data under subheading 4408.90.90-09 because Fine Furniture's technical description of its production process indicates that its base veneers

[203] *See* Letter to the Department from CAHP (June 3, 2013) at Exhibit 23
[204] *See id*. at 17-18. *See, e.g.*, *Hand Trucks* accompanying IDM at Comment. 1 (inflating a year 2000 electricity surrogate value for use in the administrative review covering the period December 1, 2004 through November 30, 2005).
[205] *See id*; *see also Pure Magnesium* and accompanying Decision Memorandum.

are back veneers and the correct and most specific classification for such an input is 4408.90.90-09.[206]

- Alternatively, the Department should use PSCC 4408.90.90 to value Fine Furniture's base veneers.

Department's Position: We agree with Fine Furniture and CAHP that the HTS category 4408.90, used by the Department in the preliminary results to value the inputs for core veneer is not specific to the inputs of core veneer, because it includes HTS classifications unrelated to the referenced inputs. Specifically, it includes sheets for veneering which are obtained by slicing laminated wood, (b) sheets for plywood, of white lauan, (c) white lauan, sawn lengthwise, sliced or peeled, (d) tanguile, sawn lengthwise, sliced or peeled; (e) veneer corestock; (f) narra, sawan lengthwise, sliced or peeled and (g) others.[207] It is the Department's practice, when selecting the best available information for valuing FOPs, in accordance with section 773(c)(l) of the Act, to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, and contemporaneous with the POR.[208] Accordingly, since HTS category 4408.90 is not specific to the inputs of core veneer, the Department did not use this HTS category for the valuation of core veneers in the final results.

We agree with Fine Furniture that the GTA for the Philippine HTS category 4408.9090.06 ("sheets for plywood") is the most specific HTS subheading for the valuation of core veneers. After examining the core veneer surrogate values on the record, the Department determined that the most appropriate surrogate value for core veneers is the 2009 data for HTS category 4408.9090.06 involving sheets for plywood.[209] Fine Furniture reported that it used veneer sheets of poplar, eucalyptus and beech for making plywood.[210] The description of Fine Furniture's core veneers matches the HTS category HTS 4408.9090.06 for sheets for plywood in that Fine Furniture used core wood material sheets of veneer for making plywood.[211]We note that, while the GTA data for the referenced HTS category are not contemporaneous with the POR, they are the best information available on the record matching the inputs of core veneers, and they can be adjusted for inflation to reflect a core veneer value for the POR. Accordingly, in the final results of this administrative review, we valued the core veneer inputs with 2009 data, reported under the GTA for Philippine HTS category 4408.9090.06, after adjusting said data for inflation.

We disagree with CAHP that Fine Furniture's production process indicates that the inputs for veneer is back veneer that is properly classified under either HTS categories 4408.90.90 or 4408.90.90-09. CAHP acknowledged in its case brief,[212] and we agree, that most of the HTS classifications within the 10-digit HTS category 4408.90.90 do not match the inputs for core veneers, as this HTS category includes inputs, unrelated to the core veneer at issue, such as,

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[206] *See id; see also* Fine Furniture's Section D Supplemental (August 1, 2013) at Exhibit SD-15.
[207] *See* Petitioners' Surrogate Value Rebuttal Comments (June 3, 2013) at Exhibit 24.
[208] *See Certain Artist Canvas* and accompanying IDM at Comment 2.
[209] *See* Exhibit SV-1 of Fine Furniture's May 24, 2013 submission, the Surrogate Values chart in Exhibit SD-2-2 of Fine Furniture's September 19, 2013, in which Fine Furniture described its core veneers as sheets of veneer for making plywood, and Exhibit 3 of CAHP's June 3, 2013 submission.
[210] *See id.*
[211] *See* Fine Furniture's technical description of the referenced core veneer in Exhibit SD2-2 of its September 19, 2013 submission.
[212] See CAHP's January 22, 2014 Rebuttal Brief comments at 32 and 33.

sheets for veneering which are obtained by slicing laminated wood, sheets for plywood of white lauan, white lauan sawn lengthwise, sliced or peeled, tanguile sawn lengthwise sliced or peeled; veneer corestock; narra sawan lengthwise sliced or peeled and others.[213] As such, HTS category 4408.90.90 is too broad to be used for the valuation of the inputs for core veneers. Accordingly, we determine that CAHP's request that the Department use HTS category 4409.90.90 is unwarranted. We also disagree with CAHP that Fine Furniture's technical description of its production process necessarily means that it used back veneers, which should be classified under HTS category 4408.9090.09.[214] CAHP's claim is contradicted by information on the record indicating that the inputs of core veneer sheets used by Fine Furniture are core or base veneers used for making plywood.[215] These types of core veneers (*i.e.*, core wood material sheets for making plywood) are properly classified under HTS category 4408.9090.06 for sheets for plywood

CAHP further argues that the 2009 GTA import data for 4408.90.90-06 should not be used because these data are not contemporaneous and are from a single country (Singapore). In support of its argument CAHP drew an analogy between the referenced import data for core veneer in this administrative review and the Department's decision not to select South Africa as the primary surrogate country in the *Pure Magnesium* because the South African import data for scrap magnesium, the primary input used for pure magnesium, were from a single month prior to the POR. However, while the Department acknowledges that the 2009 GTA import data for HTS category 4408.9090.06 are not contemporaneous with the POR and from a single country, in a single month, such data, as indicated above, represent the only surrogate value on the record specific to the inputs of core veneer used by Fine Furniture. Additionally, the 2009 import data for core veneer are from the Philippines, the primary surrogate country. Accordingly, the GTA data for HTS category 4408.9090.06, adjusted for inflation, is the best information on the record for the valuation of core veneers for purposes of these final results.

We also note that the circumstances in the *Pure Magnesium* differ from those present in this instant administrative review. In the *Pure Magnesium*, the Department's analysis involved its determination with respect to the primary surrogate country. Specifically, the Department did not consider South Africa as the primary surrogate country because the South African import data for scrap magnesium, the primary input used for pure magnesium, were not only from a single month prior to the POR, but also because the South African financial statements on the record were from companies that did not produce comparable merchandise.[216] In comparison to South Africa, the record of that review included contemporaneous Philippine SV information for all inputs, including the primary input for scrap magnesium, as well as surrogate financial statements for producers of comparable merchandise. In this administrative review, the Department determined that the Philippines is the primary surrogate country because it is at a level of economic comparability to the PRC, is a significant producer of comparable merchandise and has

[213] *See* Petitioners' Surrogate Value Rebuttal Comments (June 3, 2013) at Exhibit 24.
[214] *See* Exhibit SD-15 of Fine Furniture's August 1, 2013 Section D Supplemental Response.
[215] *See* Exhibit SV-1 of Fine Furniture's May 24, 2013 submission, the Surrogate Values chart in Exhibit SD-2-2 of Fine Furniture's September 19, 2013, in which Fine Furniture described its core veneers as sheets of veneer for making plywood, and Exhibit 3 of CAHP's June 3, 2013 submission, and Exhibit SD-15 of Fine Furniture's August 1, 2013 submission.
[216] *Pure Magnesium* and accompanying Decision Memo 10-14.

publicly available and reliable SV data.[217] Specifically, the Department determined that the Philippines has the best available information to value the mandatory respondents' FOPs because of the availability of complete SVs and useable financial statements submitted by all parties, including CAHP, in this administrative review.[218] Accordingly, in light of these circumstances and the SV data available on the record specific to core veneer, from the primary surrogate country selected by the Department, we found it appropriate to use the 2009 GTA import data for HTS category 4408.9090.06, as the best information available for the valuation of core veneer. Moreover, we note that the Department's determination with respect to the valuation of core veneer is also consistent with its final remand redetermination of the underlying investigation on MLWF from China, in which the Department used the same HTS subheading 4408.9090.06, from the same year (*i.e.*, the 2009 GTA import data from the Philippines), to value core veneer on the grounds that the referenced HTS category is the most specific SV for core veneer, which, when adjusted for inflation, constituted the best information available on the record of the investigation.[219]

Comment 10: Surrogate Value for Labor

Armstrong:

- The 2008 ILO Chapter 6A ("2008 ILO") data are flawed and caused the Department to use an unrealistically high value for labor. The ILO Department of Statistics ("ILO-DOS") acknowledged the error in the data, which calls into question the entire source.
- Due to the flaws in the ILO data, the Department should seek other industry-specific sources, such as the 2012 Philippine Industry Yearbook of Labor Statistics for 2007 ("2007 Yearbook").
- A second best option is for the Department to inflate the 2002 ILO Chapter 6A data ("2002 ILO"), which would result in a more realistic labor value than the 2008 ILO data. The least appropriate option is for the Department to correct the error in the data following instructions from the ILO-DOS.

CAHP:

- The Department should continue to use the 2008 ILO data and use the correction method supplied by the ILO-DOS.
- The Department's stated preference is to use ILO Chapter 6A labor cost data wherever possible

Department's Position: We continue to determine that the 2008 ILO data are the best available information on the record to value the labor costs for the respondents. We based our determination on the Department's stated preference to use ILO Chapter 6A data where possible, the ability to fix the error in the data supplied by the ILO-DOS, and the fact that the source is closer to the POR.

[217] *See* Prelim Decision Memo

[218] *See id.*

[219] *See Baroque Timber Indus. (Zongshan) Co. v. United States*, No. 12-00007, Final Results of Redetermination Pursuant to Court Order at 24, ECF No. 132 (Nov. 14,2013).

In the preliminary results, the Department valued labor using the 2008 ILO data as it was presented on the record.[220] Using the best available information, the Department used the 2008 daily rate of Philippine Peso ("PHP") 749 for the compensation of employees working in Subclassification 20 of the United Nations' International Standard Classification of All Economic Activities ("ISIC") Revision 3, "Manufacture of Wood and of Products of Wood and Cork, except Furniture."[221] This resulted in an hourly rate of PHP 108.15, which we applied to the respondents' direct, indirect and packing labor.[222]

Subsequent to the publication of the *Preliminary Results*, new information was made available on the record, demonstrating that the ILO data were flawed and misrepresented, which resulted in the Department using an inappropriately high value. Officials from the ILO-DOS acknowledged that the figure presented as compensation for employees, 749 PHP, actually represented the indirect labor costs for the month.[223] Adding this value to the value of monthly direct labor costs, PHP 9,434, results in a total monthly labor rate of PHP 10,183. The two interested parties who commented on the matter – Armstrong and CAHP – are in agreement that PHP 10,183 represents the correct figure for combined direct and indirect monthly labor costs, according to the 2008 ILO source. Although the flaw in the data can be corrected, Armstrong argues that the error calls into question the validity of the 2008 ILO data and that, therefore, the Department should instead use the 2007 Yearbook value, which relies on BEAMS data. Further, respondents argue that the 2008 ILO data are based on the Employment, Hours and Earnings Survey ("EHES"), which is limited to overtime and assimilated earnings, while excluding all other components of earnings, *i.e.*, remuneration for normal time worked or work done, allowances, bonuses and gratuities, and earnings in kind.

The Department recently addressed this same argument in *Chlorinated Isos 11/12 Final*, and we continue to reject the argument that the 2008 ILO data are based solely on the EHES survey.[224] Information contained within the survey demonstrates that other data, either within or outside of the EHES Survey, is reasonably included in the compilation of the ILO Chapter 6A labor data for the Philippines. Specifically, in a section of the EHES survey entitled "Other information," there is a subsection identified as "{d}ata supplied to the ILO for publication," which notes that there are "{d}ata on average weekly hours actually worked by employees, in non-agricultural activities and specific industries…which are derived from the Annual Survey of Establishments and cover production workers only."[225] From this, we reasonably interpret that other data, either within or outside the EHES Survey, are included in the compilation of the ILO Chapter 6A labor data for the Philippines. Furthermore, the inflated hourly rate calculated by the respondents from the 2007 Yearbook data is PHP 50.3, which is similar to both the inflated 2008 ILO hourly value and inflated 2002 ILO hourly value. It is reasonable to conclude that these values are being constructed from data that are capturing the same labor costs.[226]

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[220] *See* Prelim SV Memo.
[221] *See id.*
[222] *See* company-specific analysis memoranda published on November 18, 2013.
[223] *See* Letter from Armstrong to the Department (December 18, 2013).
[224] *See Chlorinated Isos 11/12 Final* and accompanying IDM at Comment 2.
[225] *See* Letter to the Department from Layo Wood (December 18, 2013).
[226] *See Chlorinated Isos 11/12 Final* and accompanying IDM at Comment 2.

As stated in *Labor Methodologies*, the Department converts monthly labor costs into hourly costs by dividing the amount by 24 working days per month and eight working hours per day.[227] Using this methodology, the Department converted the monthly value of PHP 10,183 into a daily value of PHP 424.3 and an hourly value of PHP 53.04. Inflating this value results in an hourly value of PHP 61.28. Alternatively, as suggested by Armstrong, the Department considered inflating the labor cost provided in the 2002 ILO data, which are the most recent information available on the record, not including the 2008 ILO data. Inflating the 2002 ILO hourly value of PHP 35 results in an hourly value of PHP 54.27, which is similar to the value provided by the 2008 ILO data.[228]

As stated in *Labor Methodologies*, the Department prefers to use ILO Chapter 6A data where possible. Although the respondents argue that the facts of this case are similar to those of *Sinks*, where the Department chose a Thai government source over the ILO Chapter 6A data, the facts of the two cases are not similar. In *Sinks*, the ILO Chapter 6A data were not product specific but, rather, reported the total labor cost for all twenty-three different manufacturing industries covered by the ISIC codes.[229] Additionally, the Thai government source was one year closer to the POI than the ILO Chapter 6A data, which is the reverse of the facts involved in this proceeding.[230]

Therefore, for the final results, the Department applied an hourly labor value of PHP 61.28, based on the inflated 2008 ILO data. To avoid double counting, we revised the calculation of financial ratios to treat indirect labor, non-remunerative compensation and benefits included in Chapter 6A of the ILO's calculation of wages as labor and not as manufacturing overhead or SG&A.[231]

Comment 11: Surrogate Value for Water

Fine Furniture:

- The Department should only use LWUA data for the final results because the data represent country-wide rates, while including data from Manila Water and Maynilad double-weighs Manila metro area rates.

CAHP:

- These three sources serve different parts of the country and all three need to be included in the surrogate value calculation to capture the broadest market average for water.

Department Position: In the *Preliminary Results*, the Department calculated the surrogate value for water using an average rate from the following three sources: 1) Manila Water; 2) Maynilad Water Services, Inc. ("Maynilad"); and 3) Local Water Utilities Administration ("LWUA"). The Department continues to calculate the surrogate value for water using an average rate from Manila Water, Maynilad, and LWUA. The Department disagrees with Fine Furniture's argument that the inclusion of data from Manila Water and Maynilard double-weighs

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[227] *See Labor Methodologies.*
[228] *See* Case Brief from Armstrong (January 13, 2014).
[229] *See Sinks* and accompanying IDM at Comment 3
[230] *See id.*
[231] Final SV Memo.

Manila metro area rates. Rather, the Department finds that using data from all three sources provides the best representation of water value in the Philippines by covering different parts of the country. Specifically, the LWUA promotes and oversees "the development of water supply systems in provincial cities and municipalities outside of Metropolitan Manila."[232] Manila Water covers areas in the "East Zone concessionaire," including parts of Manila and metro Manila.[233] Maynilad covers areas in the "West Zone" including parts of Manila and metro Manila not covered by Manila Water.[234] For example, Manila Water covers "Manila (San Andres and Sta. Ana only)" and "Makati City (east of South Super Highway)," while Maynilad covers "Manila (all but portions of San Andres & Sta. Ana)" and "Makati City (west of South Super Hi-way)."[235] Therefore, the information on the record indicates that these three sources cover different geographical areas of the Philippines, and their use to calculate the surrogate value for water is representative of a more comprehensive broad-market average than can be obtained from any of the sources individually.

Comment 12: Surrogate Value for Electricity

Fine Furniture:

- The Department should use the Philippines National Power Corporation ("NPC") to value electricity, which it has used in previous cases.
- NPC values are contemporaneous and reflect a broad nation-wide average, while the electricity rate for Doing Business in Camarines Sur ("Camarines Sur") has not changed since 2009 and comes from one small province on the island of Luzon.
- NPC specifically unbundles taxes and duties from its rates, while Camarines Sur provides no indication that the rates provided are exclusive of taxes or duties.

CAHP:

- NPC is a government-owned corporation with a primary mandate to bring power to remote areas that are not connected to the transmission system of the country, which is clearly not representative of the main grid rates.
- NPC is heavily subsidized by the Philippine government. In 2011, NPC's operating costs were PHP 7.951 billion with income of only PHP 2.389 billion, resulting in direct government subsidies of PHP 2.256 billion and indirect subsidies of PHP 4.557 billion.
- Meralco's rates are numerous and are expressed as a flat monthly rate rather than a kilowatt hour basis. Due to this, the Department rejected using Meralco in the recent *Chlorinated Isos 11/12 Final* administrative review.

Department's Position: While the Department has used both the Meralco and NPC rates in recent cases,[236] we continue to find that the data from Camarines Sur represent the best available information on the record to value electricity for the respondents. We find that the Camarines

[232] *See* Fine Furniture's Post-Preliminary Results Surrogate Value Comments at Exhibit 6.
[233] For a list of the areas covered by Manila Water, *see* Prelim SV Memo at Exhibit 4.
[234] For a list of the areas covered by Maynilad, *see id.*
[235] *See id.*
[236] *See Plywood Final* and accompanying SV Memo*; see also Hangers Prelim* and accompanying SV Memo, unchanged in *Final Results*; *see also Cased Pencils 10/11* and accompanying Factor Valuation Memo.

Sur data offer specific rates for industrial users and that the data provided from Meralco is not suitable to be used in this review.

Respondents argue that because the source link to the Camarines Sur data is no longer available, the Department's practice demands that we determine the data are no longer publicly available. We disagree. Respondents distort the facts in citing *Nails Final Results*. In that case, there was a challenge as to the public availability of certain financial statements placed on the record by one of the parties, However, in addressing this issue for the final results, the Department explained that "the web link the Department previously placed on the record to corroborate the public availability of the statements is nonfunctional."[237] As a result, as it was unable to corroborate the public availability of the statements, the Department declared that the challenged financial statements were not publicly available. However, contrary to *Nails Final Results*, where the public availability of the source data themselves were challenged, in the instant case, the source data obtained from the Camarines Sur web site was clearly publicly available at least as recently as May 3, 2013, the date on which it was printed for placement on the record of this review.[238] Whether it continues to be publicly available now may be pertinent to whether it can serve as an appropriate source in subsequent segments; it is irrelevant for the purposes of the instant review, and we continue to find it to be reliable, publicly available information SV information for the instant review.

Regarding NPC, the data provide only a single effective rate based on unbundled rates for the Luzon, Mindanao and Visayas power grids.[239] However, the Camarines Sur data reflect prices for residential, commercial and industrial users, which offer a greater specificity than NPC.[240]

Respondents argue that the Department should value electricity using data from Meralco, as was done in two previous proceedings (*i.e.*, *Plywood* and *Hangers*). However, in the instant review, there is no source information available on the record provided by any interested party. While respondents provided the calculations that the Department used in previous cases, several issues prevent their usage here. First, the Department notes that the calculations in *Hangers* cover October 2010 through September 2011, while *Plywood* covers January 2012 through June 2012. Given that Meralco publishes flat rates that change by month, there is no information on the record to calculate rates for October 2011 through December 2011 and July 2012 through November 2012, in accordance with the POR. Second, the Department notes that in both cases, the specific rates for "INDL IS Large 34.5 KV" were used from a "schedule of rates."[241] Without the source documentation, the Department is unable to determine which rate from the

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[237] *See Nails Final Results* and accompanying IDM at comment 1.
[238] *See* Prelim SV Memo, Attachment III.
[239] *See* Letter to the Department from Fine Furniture, regarding "Post-Preliminary Submission of Publicly Available Information to Value Factors" (December 18, 2013).
[240] *See* Letter to the Department from CAHP (May 24, 2013).
[241] *See* Memorandum to the File from Frances Veith, Senior International Trade Compliance Analyst, Office 9, Import Administration, through Catherine Bertrand, Program Manager, Office 9, Import Administration, regarding "Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Surrogate Values for Preliminary Determination" (April 29, 2013); *see also* Memorandum to the File from Kabir Archuletta, International Trade Analyst, Office 9, Import Administration, through Catherine Bertrand, Program Manager, Office 9, Import Administration, regarding "Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results" (November 1, 2012). These are Exhibits 16 and 17, respectively, of Layo Wood's December 18, 2013 submission of SVs for Final Results.

schedule of rates provided by Meralco would be appropriate to use for the respondents in this proceeding.

Finally, the Department notes that in the recent case *Chlorinated Isocyanurates from the PRC*, NPC, Meralco and Camarines Sur were available on the record. For similar reasons as described above, we ultimately used Camarines Sur to value electricity for the respondents. Specifically, we found that Camarines Sur is preferable to NPC because NPC data fail to offer the level of specificity that are available in both the Meralco and Camarines Sur data.[242] Furthermore, in this proceeding, the use of Meralco is not possible without any source data.

For the reasons stated above, for the final results, we continue to find that Camarines Sur is the best available information on the record to value per kWh electricity consumption rates for the respondents.

Mandatory Respondent Specific Issues

Armstrong

Comment 13: Armstrong's Back Veneer Surrogate Value

CAHP:

- The Department should value Armstrong's back veneer with the HTS category 4408.90.9009 – "Other Sheets for Veneering."[243] According to CAHP, the HTS category 4408.90.1000 – "Face Veneer Sheets" that the Department used in the Preliminary Results is appropriate for valuation of face veneers but not back veneers.

Armstrong:

- The Department correctly valued Armstrong's back veneers by using the HTS category 4408.90.1000 for both face and back veneers. HTS category 4408 covers sheet for veneering, HTS category 4408.90 excludes coniferous category, HTS category 4408.90.10 covers face veneers, and HTS category 4408.90.90 is for other categories. Armstrong maintains that it has both birch face and back veneers and uses them interchangeably based on the surface quality. Therefore, the use of HTS category 4408.90.10 category is appropriate for valuing Armstrong's back veneers.

Department's Position: We disagree with CAHP that we should change the SV for Armstrong's back veneer. In the preliminary results, we used the HTS category 4408.90.1000 – "Face Veneer Sheets" to value Armstrong's back veneers, which included birch and poplar backboards.[244] As CAHP noted, this was the same category that we used to value the respondent's face veneer. We disagree with CAHP's argument that HTS category 4408.90.9009 - "Other" is the most specific category for valuation of back veneers. First, the "Other" category includes non-coniferous sheets for veneering after exclusion of face veneers and "other teak not used in the manufacture of pencils." This description does support CAHP's notion that is it the most suitable category for valuing back veneer. CAHP argues that face, core, and back veneers

[242] *See Chlorinated Isos 11/12 Final* and accompanying IDM at Comment 2.E.
[243] *See* CAHP Surrogate Value Rebuttal, dated June 3, 2013, at Exhibit 24.
[244] *See* CAHP SV Memo, at Attachment I.a.

are three distinct types of sheets used in the production of multilayered wood flooring. However, CAHP does not point to any record evidence that HTS category 4408.90.1000 would not include the type of veneer sheets that will be used for back veneers, nor does CAHP cite any record evidence that HTS category 4408.90.9009 includes back veneers. Based on our research of the HTS system, there is no specific tariff category for back veneers. We agree with Armstrong's characterization of the plywood industry, that higher quality sheets are used for face veneers and lower quality sheets for back veneers. For example, as Armstrong points out, it has both a birch face veneer and birch back veneer, and that based on the characteristics of each ply in its bulk purchases of birch veneer, it will apply a higher quality sheet of birch as the face and a lower quality sheet of birch as the back veneer.[245] We find it viable that Armstrong would have purchased back veneer in the shipment similar to the merchandise described under 4408.90.1000 category because it would contain sheets suitable for both its back and face veneers. For example, record evidence indicates the Armstrong purchases identical birch veneer for face and back veneer, with less than 9 percent moisture content and of 1240-1240-1.70 mm size.[246] Therefore, for the final results, we continue to find that 4408.90.1000 "Face Veneer Sheets" is the best available information to value Armstrong's back veneers.

Comment 14: Armstrong's Transportation Expenses for Market Economy Purchases

CAHP:

- The Department should have included B&H in the United States, B&H in China, and marine insurance in the transportation expenses incurred by Armstrong related to its MEPs, because Armstrong's terms of delivery require that these expenses be paid by the buyer.
- The Department should use B&H and marine insurance SVs used in the *Preliminary Results.*

Armstrong:

- CAHP did not demonstrate how Armstrong incurred these expenses. If the Department accepts CAHP's argument, it should apply the B&H SV information submitted by Armstrong and the marine insurance incurred by Armstrong related to its U.S. sales of subject merchandise.

Department's Position: In the *Preliminary Results*, we valued Armstrong's MEPs by adding certain transportation costs based on Armstrong's terms of delivery.[247] However, CAHP argues that the terms of delivery require that the Department add B&H in the United States, B&H in China, and marine insurance. We agree with CAHP. Based on the terms of delivery involving Armstrong's raw material MEPs, the above-listed transportation charges should be added to the cost of these inputs in order to account for the full transportation cost incurred by Armstrong.[248] Consistent with the Department's practice of applying the "total delivered cost" of MEPs, we

[245] *See* Exhibit S-10 of Armstrong's July 12, 2013, Sections A and D questionnaire response.
[246] *See id.*
[247] *See* Armstrong's Prelim Analysis Memo.
[248] See S-6 and S-7 of Armstrong's July 12, 2013, supplemental sections A and D questionnaire response.

revised Armstrong's MEPs to include B&H in the United States and China, and marine insurance.[249]

With respect to Armstrong's argument that CAHP failed to demonstrate how Armstrong actually incurred these expenses, we find that the terms of delivery reveal that Armstrong, as the buyer, would have been responsible for payment of these transportation charges for shipment of MEPs from the United States to China.[250] Alternatively, Armstrong maintains that the Department should use the B&H as outlined by Armstrong in its case brief and the marine insurance actually incurred by Armstrong on its U.S. sales of subject merchandise. We disagree with Armstrong, in part. For the final results, we used Armstrong's actual ME marine insurance related to its U.S. sales of subject merchandise;[251] however, with respect to B&H, we used the B&H as stated in Comment 4 of this memorandum.[252]

Comment 15: Armstrong's International Freight

CAHP:

- The Department should correct its error in applying Armstrong's international freight. According to CAHP, the Department erroneously applied "greater than 33 percent" language to the NME percentage, as opposed to the ME percentage.
- The Department erroneously programmed the ME percentage for the port-specific international freight as the default, rather than transaction-specific international freight. The Department should correct this error.
- The Department applied a conversion factor from kg to square feet to both ME and NME international freight. However, the Department should have applied the conversion only to ME transactions because the SV for international freight is based on kg.

Department's Position: We agree with CAHP that in the preliminary results, the Department erred in the application of ME for international freight when it was based on greater than 33 percent purchases of ME-based international freight. We inadvertently applied the 33 percent threshold to the NME-based international freight. Therefore, for the final results, we corrected this error by applying the "greater than 33 percent" rule to the ME-based international freight only.[253]

We further agree with CAHP that we erred in defaulting the ME percentage for port-based international freight rather than transaction-based international freight. In other words, the program selected port-based international freight for the calculation of total international freight, as opposed to the more specific transaction-based international freight. Therefore, for the final results, we corrected this error by selecting transaction-specific international freight.[254]

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[249] *See Staple Fiber from China* and Armstrong's Final Analysis Memo.
[250] *See* S-6 and S-7 of Armstrong's July 12, 2013, supplemental sections A and D questionnaire response.
[251] *See* Exhibit S-26 of Armstrong's July 1, 2013, supplemental sections A and C questionnaire response and Armstrong's Final Analysis Memo.
[252] *See* Final SV Memo and Armstrong's Final Analysis Memo.
[253] *See* Armstrong Final Analysis Memorandum.
[254] *See id.*

Finally, we agree with CAHP that we erroneously converted the SV to kg for ME-based international freight. Therefore, for the final results, we applied the conversion from kg to square feet only to SVs used for NME-based international freight.[255]

Comment 16: Armstrong's Miscellaneous and Energy Resources

CAHP:

- The Department should disregard Armstrong's miscellaneous revenues and energy surcharges because they should be treated as offsets to corresponding invoice-specific expenses. These revenues are associated with transporting raw materials and finished goods and, thus, are not relevant to the sales of subject merchandise.
- The Department incorrectly applied these revenue items as decreases to the gross unit price.

Armstrong:

- Miscellaneous revenues and energy surcharges are associated with the U.S. sales as Armstrong charges these amounts to its customers and, they are paid by the customer in connection with the sale of subject merchandise.
- The Department erred in deducting Armstrong's miscellaneous and energy revenues in deriving the net U.S. price. Armstrong maintains that for the final results, the Department should add these revenues to the gross unit price.

Department's Position: Both CAHP and Armstrong raised the treatment of Armstrong's miscellaneous revenues and energy surcharges in their case briefs. CAHP argues that the Department should disregard the revenues as they are associated with transporting raw materials and finished goods, energy cost recovery and other services. Citing to *Pipes and Tubes from Thailand*, CAHP argues that it is the Department's practice to offset freight expenses by corresponding revenues.[256] *Pipes and Tubes from Thailand* discusses the offset of expenses by freight revenue and not miscellaneous revenues and energy surcharges, which are not revenues related to freight expense. We agree with Armstrong that miscellaneous revenues cover a range of items, such as handling and restocking charges,[257] energy surcharges offsetting the costs associated with manufacturing the merchandise, and the transportation of raw materials and finished goods.[258] We determined that the fields Armstrong's miscellaneous revenues and energy surcharges are different from the freight revenue field discussed in *Pipes and Tubes from Thailand,* as Armstrong's miscellaneous revenues and energy surcharges are charged to the customer and paid by the customer associated with the sale of subject merchandise, and are not related to a services provided by the respondent to the customer unrelated to the sale of subject merchandise.[259] Therefore, for the final results, we will continue to include these two fields in the calculation of the U.S. net price.

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[255] *See id.*
[256] *See Pipes and Tubes from Thailand.*
[257] *See* Armstrong's July 1, 2013, supplemental sections A and C supplemental questionnaire response, at 24.
[258] *See id.*
[259] *See id*.

We further agree with Armstrong that we erred by adding miscellaneous revenues and energy surcharges to the gross unit price adjustment, which, as a deduction from gross unit price, means that we erroneously deducted these revenue amounts from the gross U.S. price.[260] We note that though CAHP argues that the Department should disregard these revenue fields in Armstrong's U.S. sales database, it also agrees that this was an error in the Department's application of these two revenue items. In other words, according to CAHP, if these revenues were admissible, it would be appropriate for the Department to add them to, rather than subtract them from, the gross unit price. Therefore, for the final results, we added miscellaneous revenues and energy surcharges to the gross unit price.[261]

Comment 17: Armstrong's Freight Revenue

CAHP:

- The Department should treat freight revenue as an offset to freight expense and not an adjustment to price.

Department's Position: We agree with CAHP.[262] For the final results, we adjusted Armstrong's freight revenue as an offset to freight expenses as opposed to gross unit price adjustments.[263] The freight expenses that we offset by freight revenue are U.S. inland freight from port to warehouse and U.S. inland freight from warehouse to the unaffiliated customer.

Comment 18: Patriot's U.S. Indirect Selling Expenses

CAHP:

- The Department should correct Armstrong's U.S. indirect selling expenses to include all indirect selling expenses incurred on sales made by Patriot in the United States.

Armstrong:

- Patriot is Armstrong's affiliated distributor and, thus, a lower level of selling expenses would have been required to sell to Patriot than to an unaffiliated customer.
- If the Department decides to adjust the U.S. indirect selling expenses on sales by Patriot, then it must correct an inadvertent error made by Armstrong in calculating its U.S. indirect selling expense ratio, and apply the revised percentage.

Department's Position: We agree with CAHP that the U.S. indirect selling expenses reported in Armstrong's sales database for sales made through Patriot, were exclusive of the portion of indirect selling expenses incurred by AWI, Armstrong's affiliated U.S. customer. Armstrong sold subject merchandise through two different channels of distribution in the United States: (1) through AWI directly to the unaffiliated customer, and (2) through AWI to Patriot to the unaffiliated customer. However, for the sales made through Patriot, Armstrong's U.S. sales database included indirect selling expenses incurred only by Patriot and did not reflect indirect

[260] *See* Armstrong's Prelim Analysis Memo at 5.
[261] *See* Armstrong's Final Analysis Memo.
[262] *See Orange Juice*.
[263] *See* Armstrong's Final Analysis Memo.

selling expenses incurred by AWI. Therefore, for the final results, pursuant to section 772(d)(1)(D) of the Act, for sales made through Patriot, we added to Patriot's indirect selling expenses the indirect selling expenses incurred by AWI.[264]

Armstrong argues that because Patriot was an affiliated distributor, a lower level of indirect selling expenses would have been incurred by AWI in selling to Patriot.[265] However, Armstrong does not substantiate this argument with record evidence. The record reflects Armstrong's calculation of AWI's and Patriot's indirect selling expense ratio, which includes the sales amount during the POR and the indirect selling expenses.[266] Therefore, we find that combining both AWI's and Patriot's U.S. indirect selling expenses is the best information for calculating an accurate indirect selling expense for sales by AWI through Patriot.

Additionally, Armstrong argues that the Department should correct Armstrong's inadvertent error of double counting AWI's indirect selling expense. We agree with Armstrong that it had added the total 2012 expenses twice in its calculation of total selling expenses for the POR, which was used as the numerator of the indirect selling expense ratio.[267] For the final results, we corrected this error in the indirect selling expense calculation for sales made through AWI and for the AWI portion of indirect selling expenses for sales made through Patriot.[268]

Comment 19: Armstrong's Ocean Freight

Armstrong:

- The Department should not have used ocean freight rates for less than full container loads to calculate Armstrong's ocean freight SV. This rate does not reflect its experience where its U.S.-based suppliers used full container loads to ship veneers to Armstrong.

CAHP:

- CAHP agrees with Armstrong that the Department should revise its ocean freight rate and suggests using the rate that CAHP place on the record.[269]

Department's Position: In the preliminary results, we used an ocean freight rate for mixed commodities for the city pair Shanghai to Los Angeles from Descartes.[270] Armstrong argues that the rate obtained from Descartes was based on freight shipped in a less than full container load, and suggests using its rate obtained from Descartes for activated carbon for the Shanghai to Los Angeles city pair for a full container load, or alternatively, based on freight quotes from MacroTransport Services, LLC or World Freight Rates. CAHP agrees with Armstrong that the Department should update its ocean freight rate and suggests using a different SV for ocean freight, also obtained from Descartes.

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[264] *See* Armstrong's Final Analysis Memo.
[265] *See* Exhibit S-35 of Armstrong's July 1, 2013, supplemental sections A and C questionnaire response.
[266] *See id.*
[267] *See id.*
[268] *See* Armstrong's Final Analysis Memo.
[269] *See* CAHP's December 18, 2013 SV submission at Exhibit 11.
[270] *See* Prelim SV Memo at 11 and Armstrong Prelim Analysis Memo at Attachment 4.

As an initial matter, it is not the Department's preference to use price quotes if the record contains information based on actual commercial transactions.[271] In the instant review, the price quotes placed on the record do not reflect actual transactions.[272] Therefore, we disregarded Armstrong price quotes based on MacroTransport Services, LLC or World Freight Rates.

CAHP's proposed rate is for shipment of building materials, the rate used in the preliminary results is based on shipments of mixed commodity, and Armstrong's proposed rate is based on activated carbon. However, only the rate proposed by Armstrong is for a full container load.[273] After examining the record evidence, we find that a rate based on the shipment of a full container load is preferable to a rate based on the shipment of a less than full container load because, as Armstrong explained, it ships full container loads of the subject merchandise.[274] In other words, absent a rate for full container loads of multilayered wood flooring, we find that Armstrong's suggested rate for shipments of full container loads of activated carbon is a more appropriate SV than the rates on the record that are for shipments of less than full container loads because the fullness of a container has a stronger impact on the freight rate than the type of merchandise.[275]

Comment 20: Armstrong's MEP Prices

Armstrong:

- The Department incorrectly valued certain veneer MEPs by treating Armstrong's updated prices as untimely. Additionally, the updated prices were exclusive of freight expenses and were not untimely as Armstrong was responding to the Department's request to exclude the NME portion of the freight. Therefore, the Department should apply the MEPs provided in Armstrong's September 30, 2013, supplemental questionnaire response.

Department's Position: We agree with Armstrong that its MEPs that we did not use were derived from information previously on the record of the current proceeding and, thus, were not new factual information. After examining record evidence, we agree that the MEPs in Armstrong's September 30, 2013, supplemental D response, at Exhibit SD-1 were different from the previous submission because Armstrong excluded the freight expenses. Therefore, for the final results, we revised Armstrong's MEPs to match those reported in SD-1 as they were exclusive of freight.[276]

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[271] *See e.g., Steel Threaded Rod from China; see also FFF from Vietnam.*
[272] *See* Armstrong's December 18, 2013, SV submission, at Exhibit 2.
[273] *See id.*
[274] *See* Armstrong's July 12, 2013, supplemental sections A and D questionnaire response at Exhibit 7..
[275] *See* Final SV Memo and Armstrong's December 18, 2013, SV submission at Exhibit 2.
[276] *See* Armstrong's Final Analysis Memo at Attachment 1.

Comment 21: Armstrong's Transportation Expenses – Market Economy Distances

CAHP:

- The Department erroneously applied km-based truck freight SV to the distance in miles from Marion, WI to Long Beach, CA. Accordingly, the Department should correct this error by multiplying the distance in miles by 1.60934 to obtain the correct truck freight per km.

Department's Position: We agree with CAHP that we applied the Philippine truck freight SV, which is based on km, to Armstrong's U.S. supplier's inland truck distance in miles without converting it. Therefore, for the final results, we corrected this error.[277]

Comment 22: Armstrong's Hickory Veneer Valuation

CAHP:

- The Department applied an SV with the HTS category 4408.90.1000 to Armstrong's hickory veneer input because Armstrong purchased hickory veneer from an affiliated ME supplier. The Department did not follow CAHP's request to obtain the affiliate's price from its unaffiliated supplier. Therefore, the Department should use Armstrong's reported MEP with additional transportation costs.

Armstrong

- Armstrong could not satisfy the Department's arm's-length test as there are no unaffiliated party prices on the record. Armstrong maintains that the Department should continue valuing Armstrong's hickory veneer with SV selected in the preliminary results.

Department's Position: In the Preamble to the *Final Rule of the Antidumping Duties*, the Department explained that

> the appropriate standard for determining whether input prices are at arm's length is its normal practice of comparing actual affiliated party prices with prices to or from unaffiliated parties. This practice is the most reasonable and objective basis for testing the arm's length nature of input sales between affiliated parties, and is consistent with section 773(f)(2) of the Act.[278]

Armstrong initially reported its hickory veneer as an MEP, and record evidence indicated that Armstrong purchased hickory veneer from an affiliated supplier.[279] As a result, CAHP requested that the Department obtain further information regarding the MEP prices of hickory veneer in order to determine whether the prices would pass the arm's-length test.[280] After examining the record, the Department determined that the normal arm's-length test is not possible in this case,

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[277] *See* Armstrong's Final Analysis Memo.
[278] *See* Preamble to *Final Rule of the Antidumping Duties.*
[279] *See* Armstrong's May 17, 2013, section D response, at Exhibit D-9 and Armstrong's July 12, 2013, supplemental sections A and D questionnaire response, at Exhibits S-7 and S-21.
[280] *See* CAHP's June 3, 2013, deficiency comments, at 5.

because Armstrong reported no hickory veneer purchases from unaffiliated suppliers. Further, as explained in Comment 6 with respect to the SV for NCNT face veneer, other respondents' ME and NME purchases of hickory veneer are not appropriate benchmarks against which to test Armstrong's affiliated-party purchases of hickory veneer. Absent any appropriate benchmark prices with which to test Armstrong's affiliated-party hickory veneer purchases, the Department requested that Armstrong report hickory veneer as an NME input. On August 23, 2013, Armstrong complied with the Department's request and reported its hickory veneer FOP as an NME input. In the preliminary results, the Department applied an SV with the HTS category 4408.90.1000 to Armstrong's hickory veneer.[281]

CAHP argues that the Department ignored its June 3, 2013, deficiency comments. However, CAHP's deficiency comments referred to obtaining additional information in order to perform an arm's-length test. As explained above, the Department is unable to perform an arm's-length test, because there is no appropriate benchmark against which to compare Armstrong's affiliated-party purchase prices.

With respect to CAHP's argument regarding the selection of values as the best available information to value Armstrong's hickory veneer, we continue to find that HTS category 4408.90.1000 is the best available information with which to value Armstrong's hickory veneer. In an attempt to disqualify the SV selected by the Department, CAHP asserts that certain MEPs for hickory veneer on the record of this review are significantly higher than the hickory veneer SV. However, as explained in Comment 6, the Department continues to find HTS category 4408.90.1000 is the best available information with which to value NCNT face veneer, which includes hickory. Moreover, as we explained in Comment 8, respondents' MEPs are not an appropriate benchmark against which to compare the AUV from the Philippine import data used as an SV.

With respect to CAHP's argument that facts are similar to the *Drill Pipe,* we disagree. In *Drill Pipe*, the Department compared the price paid by the respondent to its affiliated supplier to the price paid by the same respondent to its unaffiliated supplier of the same input, and found that the affiliated supplier's price fairly reflected the MEP price. However, as explained above, it is precisely because Armstrong made no purchases of hickory veneer from unaffiliated suppliers that we are unable to conduct the same arm's-length test as was used in *Drill Pipe*. Further, there is no record evidence that supports CAHP's argument that Armstrong's affiliated supplier is a purchaser of hickory veneer, but even if it is, there is no evidence of hickory veneer prices charged by its unaffiliated supplier to customers other than Armstrong's affiliated supplier.

Finally, CAHP argues that the Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input from all ME sources during the period of investigation or review exceeds 33 percent of the input purchased from all sources during the period.[282] However, this statement does not account for the fact that the input in this instance is purchased from an affiliated party. Therefore, for the final results, we continued to use HTS category 4408.90.1000 to value Armstrong's hickory veneer.

[281] *See* Prelim SV memo, at Attachment 1.a.
[282] *See Antidumping Methodologies.*

Comment 23: Armstrong's Truck Freight

Armstrong:

- The Department should not have applied Philippine truck freight to Armstrong's inland freight that took place in the United States. Instead, the Department should use the U.S. truck freight from Marion, Wisconsin to Long Beach, CA, which is the distance from its U.S. supplier of MEP to the port of embarkation. The Philippine source CTAP used by the Department in the preliminary results is less specific as it does not account for rates per km for different levels of distances whereby longer distance would yield a lower per km rate.
- Alternatively, if the Department continues to use CTAP truck freight, then it should utilize actual driving distances rather than straight line distances. The Department should not use simple-averaged truck freight as it is skewed toward shorter distances and more expensive rates. Instead, the Department should use a weighted – average freight rate that considers the actual shipment distance. Finally, the Department should remove VAT from the freight rate.

CAHP:

- Based on the record evidence, Armstrong paid RMB for its U.S. truck freight. Therefore, treatment of truck freight as an NME expense is correct and the use of a source from the primary surrogate country, *i.e.*, Philippines, is appropriate for truck freight SV.
- The Department should not modify its calculation of truck freight because it is the Department's practice to base SVs on a broad market average. Such modification would result in numerous judgment calls for various inputs used by all four respondents.

Department's Position: We agree with CAHP that the truck freight based on Philippine freight charged by CTAP is the best available information on the record to value Armstrong's U.S. truck freight expenses. In the instant review, Armstrong purchased its ME veneers from a supplier based in Marion, WI, for which it paid in RMB.[283] Therefore, in the preliminary results, the Department valued Armstrong's U.S.-based truck freight by using the values obtained from the primary surrogate country.[284] Armstrong argues that the Philippines is the surrogate country for China and not for the United States, and that the Department's selection of a Philippine-based SV is contrary to the spirit of the NME statute. We disagree. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOP. Armstrong not only paid for the truck freight in an NME currency, but also negotiated the truck freight charges with an entity located in China. Therefore, even though the transportation occurred in the United States, we continue to find that it is appropriate to value the truck freight using the Philippine SV.

With respect to Armstrong's argument that the Department should limit the distance data, we also disagree. In the past cases, where the primary surrogate country has been the Philippines,

[283] *See* Armstrong's May 17, 2013, section D response, at Exhibit D-9 and Memorandum to the File, dated October 24, 2013.
[284] *See* Prelim SV Memo.

the Department selected the simple average based on CTAP freight rates.[285] In these cases, parties have suggested different sources for valuation of the truck freight. However, we rejected these sources in favor of CTAP because CTAP data represent a broad market average of multiple destinations, specific to the input being valued, and contain numerous data points which the Department was able to use to calculate the SV for truck freight.[286] Additionally, consistent with *WBF* and *Activated Carbon*, we determined that CTAP data representing a broad market average is superior to sources representing single or fewer distances. Armstrong's argument to limit CTAP data is contrary to the Department's preference of using broad market averages. We agree with CAHP that Armstrong's approach would introduce a level of complexity which would make it virtually impossible to match the CTAP data to Armstrong's U.S.-based supplier distance.

Furthermore, Armstrong's claim that freight for longer distances is necessarily less expensive is not supported by record evidence. On the contrary, for example, the freight of 221 km is 200.45 PHP/km, while freight of 161.49 km is 189.49 PHP/km.[287] The record of this review actually contains numerous other examples where shorter distances are less expensive.[288] Consequently, we find there are other economic reasons beyond merely distance that can impact the truck freight, further supporting the Department's use of a broad average.

Armstrong further argues that CTAP distances are straight line distances and do not account for the actual roads and the terrain that the truck would travel; however, there is not record evidence to substantiate whether the U.S. price suggested by Armstrong are not based on straight line distances.

Finally, Armstrong argues that the Department should remove the VAT rate from the freight if it continues to rely on CTAP for the truck freight. However, Armstrong has not provided any record evidence which indicates the existence of the VAT rate being applied to truck freight. Armstrong only provided an allegation stating that the CTAP freight schedule indicates that the freight rates include VAT of 12 percent. Therefore, for the final results, we will continue to value Armstrong's U.S.-based truck freight with the simple average of all CTAP truck rates used in the preliminary results.

<u>Fine Furniture</u>

Comment 24: Fine Furniture's MEP Transportation Expenses

CAHP:

- The Department did not account for certain transportation expenses involving the movement of inputs purchased by Fine Furniture from market-economy suppliers from the point of receipt of such inputs to the factory. Such transportation expenses are evident from the terms of delivery involving the purchase of said inputs.

[285] *See e.g., WBF 2012 Preliminary Results; see also Activated Carbon.*
[286] *See id.*
[287] *See* Prelim SV Memo.
[288] *See id.*

- In the final results, the Department should account for such additional transportation expenses.

Department's Position: We agree with CAHP. Given the terms of delivery involving Fine Furniture's MEP inputs, certain transportation charges should be added to the values of such inputs. Accordingly, in the final results, we revised the calculation of the values of MEP inputs by including certain transportation-related costs. Due to the proprietary nature of the referenced terms of delivery, we addressed this issue in more detail in Fine Furniture's Analysis Memorandum for the Final Results, issued concurrently with this Issues & Decision Memorandum.

Comment 25: Fine Furniture's Plywood Value Not Included in NV Calculation

CAHP:
- In the preliminary results, the Department made a ministerial error in the SAS language used to calculate the surrogate values for Fine Furniture's different plywood inputs.
- The Department should ensure that the values for Fine Furniture's inputs of plywood are included in the calculation of the final results.

Department's Position: We agree with CAHP. In the preliminary results, the Department inadvertently made a ministerial error in the SAS program used to calculate Fine Furniture's surrogate values for the plywood inputs, where the values of the plywood inputs were not captured in Fine Furniture's margin calculation. In the final results, we corrected this error. *See* Fine Furniture's Final Analysis Memorandum, issued concurrently with this memorandum.

Comment 26: Fine Furniture's Freight Revenue Calculation

CAHP:
- In the preliminary results, the Department treated freight revenue as a price adjustment instead of an offset to freight expenses consistent with its standard practice. The Department should correct this error by allowing freight revenue to offset but not exceed U.S. inland freight from the warehouse to the unaffiliated customer.

Fine Furniture:
- The Department should continue to treat freight revenue as an offset in the final results. Fine Furniture's freight revenue, which is incident to bringing the subject merchandise from China to the place of delivery in the United States, is a valid adjustment to U.S. price because such revenue was paid by the customer and received by Fine Furniture for the goods sold.
- If the Department were to agree with CAHP that freight revenue should be treated as an offset, the Department may only cap the offset at the total amount of international movement expenses, not just the U.S. inland freight portion, as proposed by CAHP. Offsetting freight revenue by only U.S. inland freight would be inconsistent with the

specific facts about Fine Furniture's freight revenue, which is tied to international freight expenses and not limited merely to U.S. inland freight.[289]

Department's Position: The Department makes adjustments for U.S. movement expenses under section 772(c)(1) of the Act, and 19 CFR 351.401(c) directs the Department to calculate a U.S. price that is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustment" is defined at 19 CFR 351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Accordingly, the Department's normal practice is to treat freight revenue as an offset to freight costs rather than as an addition to U.S. price where freight revenue exceeds freight expenses.[290] Although the Department will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).[291]

Fine Furniture argues that the Department may only cap the offset at the total amount of international movement expenses. However, while we agree with Fine Furniture that the referenced freight revenues were tied to international freight, we disagree that such revenues should be capped by total movement charges, which include such expenses as U.S. warehouse or U.S. inland freight, as proposed by Fine Furniture, since the referenced freight revenues were not directly tied to those particular movement charges.[292] Similarly, we disagree with CAHP that the referenced freight revenues should be capped only by U.S. inland freight from the warehouse to the unaffiliated customer since the referenced freight revenues are tied to international freight. For the reasons noted above, in the final results, we capped freight revenues by the sum of international freight expenses and marine insurance expenses reported in Fine Furniture's U.S. sales database. *See* Fine Furniture's Final Analysis Memorandum.

Comment 27: Fine Furniture's B&H Calculation in the SAS Margin Program

CAHP:

- In the preliminary results, the Department made a ministerial error in Fine Furniture's SAS program with respect to the calculation of B&H, where the costs of domestic B&H were not captured in the calculation of the U.S. net price.

Department's Position: We agree with CAHP. In the preliminary results, the Department inadvertently made a programing error in the calculation of B&H. As a result of this error, Fine Furniture's domestic B&H expenses were not captured in the calculation of the net U.S. price. We corrected this error in the final results. *See* Fine Furniture's Final Analysis Memorandum.

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[289] *See id*.
[290] *See Orange Juice* and accompanying IDM at Comment 2.
[291] *See Wood Flooring LTFV Final*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 39; *see also Orange Juice* and accompanying IDM at Comment 2.
[292] *See, e.g.,* Fine Furniture's July 5, 2013, submission at 11.

Comment 28: Fine Furniture's Unreported Sample Sales and Whether to Apply Adverse Facts Available

CAHP:

- Fine Furniture refused to report its samples sales as requested by the Department. These sample sales were made in the normal course of business based on purchase orders from its customers. As such, these sales do not qualify as sample sales. Fine Furniture's refusal to report its sample sales of MLWF in its U.S. sales listing preclude the Department from weighing the totality of the evidence.
- Because Fine Furniture did not act to the best of its ability and withheld information that was in its possession, the Department should make an adverse finding and apply the highest calculated transaction-specific margin to the value that Fine Furniture reported for its sample sales.

Fine Furniture:

- In its responses to the Department's questionnaires, Fine Furniture provided the Department with complete and accurate information related to its sales of display boards, which are provided to customers as marketing and display tools and cannot be used by consumers as flooring products. As such, these display boards are not subject to the scope of this order and should not be included in the Department's calculation.
- Moreover, Fine Furniture's display boards enter the United States under a different HTS code than Fine Furniture's subject merchandise precisely because they cannot be used for flooring.
- Accordingly, the Department should confirm in the final results that Fine Furniture's display sample boards are non-subject merchandise and were properly not included in Fine Furniture's U.S. sales database.

Department's Position: In its original and supplemental questionnaires, the Department inquired about Fine Furniture's sales of sample display boards. In response to the Department's questionnaires, Fine Furniture provided extensive information on the record that explains the nature of such display board sales, and the reasons for not including display board sales in its U.S. sales database. In its section C response to the Department's original questionnaire, Fine Furniture explained that display board samples are provided to customers as marketing and display tools and that such display boards could not be used by consumers as flooring products covered by the scope of this proceeding,[293] and requested that the Department exclude such display board sales from its margin calculation. Moreover, Fine Furniture provided a separate database for display boards in that same submission in order to be responsive to the Department's request for information. Additionally, in response to the Department's supplemental questionnaire with regard to the referenced display board sales,[294] Fine Furniture explained that such sales are not "samples" in the traditional sense of the term, as envisioned in the questionnaire, because display boards are comprised of small pieces of flooring that are permanently and irreversibly affixed to a backing

[293] *See* Fine Furniture's May 17, 2013 Sections C and D Response at C-2 and Exhibit C-2.
[294] *See* The Department's Sections A and C Supplemental Questionnaires to Fine Furniture, dated June 17, 2013.

board, and could not be used for other purposes.[295] In support of its explanation, Fine Furniture also provided pictures of display boards, which are mounted to a wall unit typical of a point-of-sale display.[296] Fine Furniture also explained that it ships the display boards to the United States completed (*i.e.*, the flooring has been permanently affixed to the backing board prior to importation), and that its U.S. customers use these display sample boards in showrooms or to otherwise display the flooring to potential end users.[297] We agree with Fine Furniture that the referenced sales are unreportable because they are not covered by the scope of this proceeding. In this regard, we also note that in the underlying investigation the Department excluded sales of display boards on the grounds that display boards are not covered by the scope of the investigation.[298] As such, we find no merit in CAHP's argument that Fine Furniture did not cooperate to the best of its ability with the Department or that the application of an adverse inference is warranted, and for the final results of this administrative review, the Department continues to find display board sales not to be covered by the scope of this proceeding.

Comment 29: Whether Fine Furniture's Liquidation Instructions Should Include the Name of Its Affiliate Listed on the Import Documentation Submitted to U.S. CBP.

Fine Furniture:

- In the final results, the Department must revise Fine Furniture's draft liquidation instructions to CBP to include the name of Fine Furniture's affiliate, Double F Limited ("Double F"), because Double F is listed on all import documentation submitted to CBP for shipments of subject merchandise during the POR.
- This revision is necessary to avoid confusion at the port and unnecessary time and resources spent by both the Department and CBP correcting any mistakes that could be made as a result of omitting Double F's name from the liquidation instructions.

Department's Position: Given the affiliation between Fine Furniture and Double F, and the extent to which both companies have intertwined operations with respect to the sales of the merchandise under consideration, the Department determined that Fine Furniture and Double F are a single entity. For further details, *see* Memorandum to the File: Affiliation and Single Entity Status of Fine Furniture (Shanghai) Limited and Double F Limited, issued concurrently with this memorandum Accordingly, in the final results of this administrative review, the Department's cash deposit and liquidation instructions to be issued to CBP will reflect the names of both Fine Furniture and Double F.

[295] *See* Fine Furniture's June 26, 2013 submission: Revised Extension Request for Section A and C Supplemental Questionnaire and Request for Meeting, at pages 2-7 and Exhibits 1 and 2.
[296] *See id*.
[297] *See id.*
[298] *See* Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Preliminary Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd., dated May 19, 2011 (Public Version).

Comment 30: Fine Furniture's Face Veneer Surrogate Value

CAHP:

- In the preliminary results, the Department misclassified Fine Furniture's reported inputs for face veneer, and such errors should be corrected in the final results, as follows: [299]
    - merbau should be classified under 4408.39.90-09.
    - reclaimed pine should be classified under 4408.10.30-00.
    - tigerwood, timborana, wenge, acacia, cumaru, and Indonesia ebony should be classified as NCNT face veneers and valued accordingly.

Fine Furniture:

- While CAHP is accurate in classifying the tigerwood, timborana, wenge, acacia, cumaru and Indonesian ebony inputs as NCNT, the Department should value these inputs under HTS subheading 4408.90.1000, using the Philippine GTA data; not the HTS subheading proposed by CAHP.
- HTS 4408.90.1000, covering "non-tropical" veneers is an accurate classification for the above-referenced face veneers because such veneers are not listed as tropical in Subheading Note 1 to Chapter 44 of the Philippines HTS.[300]

Department's Position:
We agree with CAHP and Fine Furniture that the tigerwood, timborana, wenge, acacia, cumaru and Indonesian ebony inputs should be classified as NCNT face veneer. For the reasons noted in the **General Issues** section above, involving face veneer, the Department used the GTA import data for HTS subheading 4408.90.1000 as a basis for the valuation of the referenced inputs for purposes of these final results. Moreover, with respect to reclaimed pine face veneer, we agree with CAHP that this input is properly classified under HTS subheading 4408.10.30.00, since this subheading covers the same input for pine face veneer sheets.[301] We also agree with CAHP that the input for merbau is properly classified under HTS subheading 4408.39.90.09, as this HTS category covers tropical face veneer.[302]

<u>Minglin</u>

Comment 31: Minglin's Face Veneer Surrogate Value

CAHP:

- In the preliminary results, the Department misclassified Minglin's reported inputs for face veneer. The Department should classify the following inputs as NCNT face veneer and value them accordingly: okan, cabreuva, tigerwood and zebrawood.

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[299] *See* CAHP's Case Brief submission at 21. *See, also,* CAHP's June 3, 2013, Surrogate Value Rebuttal Comments at Exhibit 23, which contains the World Customs Organization's ("WCO") list of species of tropical veneers to be classified under 4408.31 to 4408.39.
[300]*See* CAHP Surrogate Value Rebuttal Comments at Ex. 23 (June 3, 2013).
[301] *See* Fine Furniture September 19, 2013 submission at Exhibit SD2-2. *See also,* Attachment I of the Surrogate Value Memorandum for the Final Results.
[302] *See id*.

Department's Position: We agree with CAHP that the okan, cabreuva, tigerwood and zebrawood face veneer inputs should be classified as NCNT face veneer. For the reasons noted in the **General Issues** section of this memorandum involving face veneer, the Department used the GTA import data for HTS subheading 4408.90.1000 for the valuation of the above-referenced inputs for purposes of the final results.

RECOMMENDATION:

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

AGREE____________ DISAGREE____________

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Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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Date

Table of Shortened Citations

2008 Withdrawal	*Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008)
Activated Carbon	*Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013)
Antidumping Methodologies	*Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006)
Antidumping Methodologies: Labor	*Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011)
Certain Artist Canvas	*Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006)
Carrier Bags	*Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008)
Cased Pencils 03/04	*Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006)
Cased Pencils 06/07	*Certain Cased Pencils From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review* 74 FR 33406 (July 13, 2009)
Cased Pencils 10/11	*Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010-2011*, 78 FR 42932 (July 18, 2013)
Chlorinated Isos 11/12 Prelim	*Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 41364 (July 10, 2013)
Chlorinated Isos 11/12 Final	*Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014)

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Corrosion-Resistant Carbon Steel Korea	*Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011)
Crawfish	*Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Recession of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002)
Diamond Sawblades 09/10	*Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013)
Diamond Sawblades LTFV Final	*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)
Drill Pipe	*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)
FFF from Vietnam	*Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011)
Final Modification for Reviews	*Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012)
Final Rule of the Antidumping Duties	*Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27362, 27295 (May 19, 1997)
Frozen Shrimp China	*Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Recession of Antidumping Duty Administrative Review*, 74 FR

	46565 (September 10, 2009)
Frozen Shrimp Vietnam	*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)
Glycine	*Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005)
Hand Trucks	*Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007)
Hangers Prelim	*Steel Wire Garment Hangers from the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 66952 (November 8, 2012)
Hangers Final	*Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013)
Hot Rolled Carbon Steel Romania	*Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005)
Labor Methodologies	*Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011)
Lightweight Thermal Paper	*Lightweight Thermal paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008)
Lined Paper	*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)
Methodological Change for Implementation of Section 772(c)(2)(B)	*Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012)
Mushrooms	*Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Recession of the Sixth*

	Administrative Review, 71 FR 40477 (July 17, 2006)
Nails Final Determination	*Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008)
Nails Final Results	*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)
Narrow Woven Ribbons	*Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010)
OTR Tires	*Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008)
Orange Juice	*Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010)
Pasta from Italy Final Determination	*Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996)
Pasta from Italy Amended Final Determination	*Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996)
PET Film	*Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008)
Pipes and Tubes from Thailand	*Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 77 FR 61738 (October 11, 2012)
Plywood Final	*Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 58273 (September 23, 2013)
Plywood Prelim	*Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013)

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Proposed Modification for Reviews	*Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment*, 75 FR 81533 (December 28, 2010)
Pure Magnesium	*Pure Magnesium from the People's Republic of China: Preliminary Results of 2011-2012 Antidumping Duty Administrative Review*, 78 FR 34646 (June 10, 2013)
Silicon Metal	*Sodium Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011)
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Staple Fiber from China	*Certain Polyester Staple Fiber From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 76 FR 2886 (January 10, 2011)
Steel Bar	*Stainless Steel Bar from India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 52294 (September 9, 2008)
Steel Threaded Rod from China	*Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 6732 (November 9, 2012)
Steel Wheels Final	*Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012)

Steel Wheels Prelim	*Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703 (November 2, 2011)
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WBF 2009 Final Results	*Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Recession in Part,* 76 FR 49729, (August 11, 2011)
WBF 2012 Preliminary Results	*Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2012*, 79 FR 10768 (February 26, 2014)
Wood Flooring LTFV Final	*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)
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Timken	*Timken Co. v. United States*, 354 F.3d 1334, 1341-42 (Fed. Cir 2004), *cert. denied* 543 U.S. 976 (November I, 2004)
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