UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-014
POI: 10/1/2013 – 03/31/2014
Public Document
AD/CVD OPS, Office VI: BCD, JKD

April 10, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: 53-Foot Domestic Dry Containers from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value

I. Summary

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes to the margin calculations of both mandatory respondents, China International Marine Containers (Group) Ltd., China International Marine Containers (HK) Ltd., Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., Qingdao CIMC Container Manufacture Co., Ltd., and Xinhui CIMC Container Co., Ltd. (collectively, CIMC)[1]; and Hui Zhou Pacific Container Co., Ltd. (HPCL), Qingdao Pacific Container Co., Ltd. (QPCL), and Qidong Singamas Energy Equipment Co., Ltd. (QSCL), Singamas Management Services Limited, and their holding company Singamas Container Holdings Limited (collectively, Singamas), as discussed below. We recommend that you approve the positions described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments from parties:

[1] The Department preliminarily determined to rely on the information submitted by CIMC to calculate the rate for the PRC-wide entity. *See 53-Foot Domestic Dry Containers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Negative Determination of Critical Circumstances; and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 70501 (November 26, 2014) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum at 14.

II. List of Issues

A. General Issues

Comment 1: Scope Exclusion Request
Comment 2: Surrogate Value for Ocean Freight
Comment 3: Surrogate Value for "Wood Flooring_Other"
Comment 4: Whether to Deduct Return Transportation Costs for Wide-Top Pick (WTP) Lift-Off Bars from U.S. Net Price

A. CIMC -Specific Issues

Comment 5: Proper Valuation of Ocean Freight and Brokerage and Handling Expenses
Comment 6: Alleged Unreported U.S. Brokerage and Handling Expenses
Comment 7: Capping of Ocean Freight Revenue by Ocean Freight Expense
Comment 8: Surrogate Value for Corner Castings
Comment 9: Incorrect Calculation of CIMC's "Wood Flooring_Other" Surrogate Value
Comment 10: Separate Rate Determination

B. Singamas-Specific Issues

Comment 11: Surrogate Value for Hinges
Comment 12: Steel Coil Factor-of-Production (FOP) Should Be Increased to Account for Yield Loss

III. Background

On November 26, 2014, the Department of Commerce (the Department) published the preliminary determination of the less-than-fair-value investigation of 53-foot domestic dry containers (domestic dry containers) from the People's Republic of China (PRC) in the *Federal Register*.[2] On December 9, 2014, we received scope comments from interested parties Crowley Maritime Corporation and Crowley Liner Services, Inc., and Sea Star Lines LLC (hereafter, collectively, "Crowley"). Based on ministerial error allegations from Petitioner[3] and Singamas,[4] on December 31, 2014, we published the amended preliminary determination in the *Federal Register*.[5]

[2] *Id*.
[3] Petitioner is Stoughton Trailers, LLC.
[4] *See* Singamas' Letter to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China: Ministerial Errors in the Preliminary Determination," dated December 1, 2014 and Petitioner's Letter to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China," dated December 1, 2014.
[5] *See 53-Foot Domestic Dry Containers From the People's Republic of China: Amended Preliminary Determination of Sales at Less-Than-Fair-Value*, 79 FR 78800 (December 31, 2014) (*Amended Preliminary Determination*).

Between January 12, 2015 and January 23, 2015, the Department conducted verification of the mandatory respondents CIMC and Singamas.[6] On March 10, 2015, Petitioner, Crowley, CIMC, and Singamas filed case briefs.[7] On March 16, 2015, Petitioner, Crowley, CIMC, and Singamas filed rebuttal briefs.[8]

Although certain parties requested that a hearing be held, all requests were withdrawn between March 9, 2015 and March 12, 2015. Thus, the Department did not hold a hearing with respect to this investigation.

IV. Scope of the Investigation

The merchandise subject to investigation is closed (*i.e.*, not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport[9] of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including "53-foot containers," "53-foot dry containers," "53-foot domestic dry containers," "domestic dry containers" and "domestic containers." These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.

---

[6] *See* Memoranda to the File "Verification of the Sales and Factors of Production Response of CIMC International Marine Containers (Group) Co., Ltd. (CIMC Group); China International Marine Containers (HK) Ltd. (CIMC HK); Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd. (Xinhui Special); Qingdao CIMC Containers Manufacture Co., Ltd. (Qingdao); Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd. (Nantong); and Xinhui CIMC Container Co., Ltd. (Xinhui Container) (collectively CIMC) in the Antidumping Duty Investigation of 53-Foot Domestic Dry Containers (domestic dry containers) from the People's Republic of China (the PRC)," dated February 26, 2015 (CIMC Verification Report); *see also* memorandum to the file, "Verification of the Sales and Factors of Production (FOPs) Response of Hui Zhou Pacific Container Co., Ltd. (HPCL); Qingdao Pacific Container Co., Ltd. (QPCL); Qidong Singamas Energy Equipment Co., Ltd. (QSCL); Singamas Container Holdings Limited (SCHL); and Singamas Management Services Limited (SMSL) (collectively, Singamas) in the Antidumping Duty Investigation of 53-Foot Domestic Dry Containers (domestic dry containers) from the People's Republic of China (the PRC)," dated February 26, 2015 (Singamas Verification Report).

[7] *See* Letter from Petitioner, "53-Foot Domestic Dry Containers from the People's Republic of China," dated March 10, 2014 (Petitioner's Case Brief); Letter from Crowley, "53-Foot Domestic Dry Containers from the People's Republic of China," dated March 10, 2014 (Crowley's Case Brief); Letter from CIMC, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Case Brief," dated March 10, 2014 (CIMC's Case Brief); and Letter from Singamas, "53-Foot Domestic Dry Containers from the People's Republic of China: Case Brief of Singamas," dated March 10, 2014 (Singamas' Case Brief), respectively.

[8] *See* Letter from Petitioner, "53-Foot Domestic Dry Containers from the People's Republic of China," dated March 16, 2014 (Petitioner's Rebuttal Brief); Letter from Crowley, "53-Foot Domestic Dry Containers from the People's Republic of China," dated March 16, 2014 (Crowley's Rebuttal Brief); Letter from CIMC, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Rebuttal Brief," dated March 16, 2014 (CIMC's Rebuttal Brief); and Letter from Singamas, "53-Foot Domestic Dry Containers from the People's Republic of China: Rebuttal Brief of Singamas," dated March 16, 2014 (Singamas' Rebuttal Brief), respectively.

[9] "Intermodal transport" refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

Domestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally define design, performance and testing requirements for closed van containers, but are not dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking[10] in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.

Domestic containers have the following actual exterior dimensions: an exterior length exceeding 14.63 meters (48 feet) but not exceeding 16.154 meters (53 feet); an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 ½ inches), all subject to tolerances as allowed by the AAR Specifications. In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, as required by the AAR Specifications. The stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames. Domestic containers also have two forward facing fittings at the front lower corners and two downward facing fittings at the rear lower corners of the container to facilitate chassis interface.

All domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container.

The scope of this investigation excludes the following items: 1) refrigerated containers; 2) trailers, where the cargo box and rear wheeled chassis are of integrated construction, and the cargo box of the unit may not be separated from the chassis for further intermodal transport; 3) container chassis, whether or not imported with domestic containers, but the domestic containers remain subject merchandise, to the extent they meet the written description of the scope. Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for "instruments of international traffic" pursuant to 19 USC 1322 and 19 CFR 10.41a may be classified under subheading 9803.00.50, HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

[10] "Double-stacking" refers to two levels of intermodal containers on a rail car, one on top of the other.

V. Period of Investigation

The period of investigation (POI) is October 1, 2013, through March 31, 2014.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.[11] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[12]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[13] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[14]

In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.[15] However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative

---

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[12] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).
[13] *Id.* at 870.
[14] *Id.*
[15] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

information.[16] Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.[17]

The Department, as discussed further below, determined to use facts available with respect to international transportation expenses for CIMC, and steel coil yield loss for Singamas. *See* Comments 5, 6, and 12 below.

VII. Changes Since the *Amended Preliminary Determination*

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification (which we accepted), we made certain changes to CIMC's and Singamas's margin calculations since the *Amended Preliminary Determination*. Additionally, with regard to Singamas, in the *Preliminary Determination*, we valued Singamas' aluminum folders FOP using Thai HTS number 7616.99.99.090 ("other articles of aluminum"). For this final determination, we agree with Singamas and find that Thai Global Trade Atlas (GTA) import data under HTS number 7612.90.90000 represents the best available information to value Singamas' aluminum folders.[18]

VIII. Discussion of Interested Party Comments

A. General Issues

Comment 1: Scope Exclusion Request

Crowley's Comments

- Crowley asserts that the Department must "exclude international 53-foot marine containers from the scope of this investigation" because, according to Crowley, the containers that it imports and uses differ physically from domestic dry containers.[19]

- Crowley argues that the Department's preliminary determination to include Crowley's containers in the scope of the investigation improperly expands the scope, stating that the law limits investigations to products identified in the scope and that products not specifically provided for in the scope cannot be treated as subject merchandise.[20]

- Crowley cites what it claims are distinct physical differences between its containers and domestic dry containers, including:

[16] *See* SAA at 869-870.
[17] *See, e.g.*, *Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61607 (October 14, 2014), and accompanying Issues and Decision Memorandum at 7-8.
[18] *See* the Department's Memorandum to the File entitled, "53-Foot Domestic Dry Containers from the People's Republic of China: Surrogate Values for the Final Determination of the Less-Than-Fair-Value Investigation," dated concurrently with this memorandum (Final Surrogate Value Memorandum); *see also* Final Surrogate Value Memorandum at Attachment 2 (surrogate values worksheet).
[19] *See* Crowley's Case Brief at 2.
[20] *Id*. at 2-3.

1. Crowley's "international marine containers" contain four stacking frames, as opposed to two that Crowley asserts define domestic dry containers;
2. Crowley's containers "have 16 fitting handles, not 8 as required by the scope language."[21]

- Crowley asserts that, because of these physical differences, "the Department may reach only one conclusion: 53-foot international marine containers fall outside the scope of the investigation" and further asserts that by accepting these physical characteristics in the scope the Department cannot ignore them as part of its scope determination.[22]

- Crowley believes that the Department thus "must consider all relevant defining scope characteristics, including: container dimensions, number of stacking frames and number of fitting handles when determining whether a product falls under the scope of the investigation."[23]

- Crowley states that domestic dry containers are not suitable for a marine environment, while its containers are, that domestic dry containers are American Association of Railroads (AAR) certified while its containers are International Maritime Organization's International Convention for Safe Containers (CSC) certified, and that marine containers do not meet the stacking frame or fittings specifications within the scope.[24]

- Crowley claims that the scope language from the Petition is specific in limiting coverage only to domestic dry containers, and that the scope made explicit statements that international marine containers were not covered by the scope.[25]

- Crowley states that both the Petition[26] and *Notice of Initiation*[27] indicate that the merchandise covered by the scope of the investigation "is used for intermodal traffic on a container chassis for on-the-road transportation and a rail car for 'rail transportation'" while international marine containers "are designed, certified and primarily for marine use under the CSC."[28]

- Crowley further claims that Petitioner modified the requested scope of the investigation "specifically excluded marine containers at the Department's request based upon a

[21] *Id*. at 3.
[22] *Id*. at 3-4.
[23] *Id*.
[24] *Id*.
[25] *Id*. at 6.
[26] *See* "Antidumping Duty Petition 53-Foot Domestic Dry Containers from the People's Republic of China," dated April 30, 2014 (Petition) at 5.
[27] *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Antidumping Duty Investigations*, 79 FR 28674, 28683 (May 19, 2014) (*Notice of Initiation*). On the same date we also published a notice of initiation for the CVD investigation of domestic dry containers from the PRC. *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Countervailing Duty Investigations*, 79 FR 28679 (May 19, 2014).
[28] *Id*. at 8.

statement in the Department's Supplemental Questionnaire indicating that the Department thought that the product was already outside the scope of the investigation based upon dimension."[29]

- Crowley states that international marine containers have other different physical characteristics, such as being sturdier and having the ability to withstand higher load weights on ships, as well as greater protection from rust.[30]

- Moreover, Crowley claims that the record of this proceeding shows that Petitioner does not manufacture 53-foot international marine containers.[31]

- Crowley states that the Petition excluded 40-foot and 20-foot marine containers, and that Petitioner removed this exclusion from the scope of the investigation on request by the Department because of the Department's "erroneous view that the scope of this proceeding is governed by dimension only and other physical characteristics should not be considered."[32]

- Crowley asserts that "Commerce's request to remove the marine container exclusion improperly expanded the scope of this investigation by failing to consider important differences between marine and domestic containers despite recognizing that differences indeed exist."[33]

- Crowley concludes by stating that there are no circumvention issues as the extra weight from their containers makes them non-optimal for rail or truck use and that such use would not make fiscal sense.[34]

- In its rebuttal brief, Crowley claims that Petitioner acknowledges differences between international marine containers and domestic dry containers, but erroneously claims that marine containers are covered by the scope of this investigation due to the dimensions of Crowley's containers.[35]

- Crowley claims that any dimensional overlap between 53-foot international marine containers and domestic dry containers was "surrendered by Petitioner's failure to

[29] *Id*.
[30] *Id*. at 11.
[31] *Id*. Crowley states that the Department often removes products from the scope of an investigation if the petitioner does not manufacture the product, and cites to the Decision Memorandum issued by Susan Kuhbach to Ronald K. Lorentzen, *Preliminary Determinations; Comments on the Scope of the Investigation, Aluminum Extrusions from the People's Republic of China*, dated October 27, 2010, at 10, *Notice of Final Determination of Sales at Less than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006), and *Notice of Final Determination of Sales of Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996) (excluded organic pasta from the scope of the antidumping duty order).
[32] *Id*. at 12-13.
[33] *Id*. at 13.
[34] *Id*.
[35] *See* Crowley's Rebuttal Brief at 2-3.

provide a more specific name and technical definition of the scope when it had the opportunity to do so" in response to one of the Department's supplemental petition questionnaires, and that Petitioner "failed to provide any product specifications, schematics, structural engineering drawings, stacking criteria, load calculations and other pertinent information to validate whether marine international and domestic dry containers are comparable to any extent for purposes of the scope."[36]

- Crowley asserts international marine containers are not domestic dry containers and that the Department "overstepped its authority by removing the international marine container exclusion established in the Petition."[37]

Petitioner's Comments

- Petitioner states that it opposed Crowley's request to exclude "53-foot marine ISO containers" and that there is "no basis," or information on the record, for the Department to differ from the preliminary determination that Crowley's containers are within the scope of the investigation.[38]

- Petitioner avers that the current scope language is appropriate and accurate, and that the Department should adopt it without modification.[39]

- In its rebuttal brief, Petitioner claims that Crowley's case brief "does nothing more than reiterate the same arguments that were made in their initial scope submission" and that the Department reviewed these comments and rejected them at the *Preliminary Determination*.[40]

- Petitioner states that Crowley's central argument is that domestic dry containers are designed primarily for use by rail or road vehicle in North America, whereas Crowley's containers are primarily for marine use, and argues that Crowley "erroneously conflates the term 'primarily' with 'exclusively'" and notes that the words are not synonymous.[41]

- According to Petitioner, Crowley does not deny that its containers can be used for intermodal transport either by road vehicle or by rail.[42]

- Petitioner states, with respect to containers used in marine transport, that if its "intention in drafting the scope was to specifically exclude any containers used in marine transport, the language would reflect that intended exclusion."[43]

[36] *Id*. at 7.
[37] *Id*. at 8.
[38] *Id*. at 6.
[39] *Id.*
[40] *See* Petitioner's Rebuttal Brief at 3.
[41] *Id*. at 4.
[42] *Id*.
[43] *Id*.

- Petitioner denies that it requested revised scope language that would specifically exclude marine containers, as Crowley asserted, and states that the scope language does not contain any such exclusion.[44]

- Petitioner states that what is specifically excluded from the scope of this investigation are ISO 20-foot and 40-foot containers, used in international shipping.[45]

- Petitioner further states that excluding ISO 20-foot and 40-foot containers is not the same as excluding "international marine containers" or "marine containers."[46]

- Petitioner also asserts that the issue of whether or not Petitioner manufactures the containers that Crowley uses, is "irrelevant" to the issue at hand.[47]

Department's Position

We agree with Petitioner that the merchandise described by Crowley as international 53-foot marine containers are within the scope of the investigation, identified in section IV, "Scope of the Investigation," above.

In the *Preliminary Determination*, we stated that "{t}he 53-foot marine ISO containers possess the same dimensional characteristics as the subject domestic dry containers, and have the stacking frames and fittings as detailed in the scope language. Therefore, an analysis of Crowley Maritime Corporation's 53-foot marine ISO containers indicates that its products meet the plain language of the scope of this investigation. Although there are certain physical differences between the subject domestic dry containers and the 53-foot marine ISO containers, these physical differences are not characteristics that define the scope of this investigation."[48]

To review, Crowley's products contain the following physical characteristics which place them within the scope of the investigation:

- 53-foot in length;[49]
- an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 1/2 inches);[50]
- two stacking frames located equidistant from each end of the container;[51]
- the stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames.[52]

[44] *Id*. at 4-5.
[45] *Id*. at 5.
[46] *Id*.
[47] *Id*. at 5-6.
[48] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 8.
[49] *See* Letter from Crowley to the Department, December 9, 2014 (Crowley Scope Submission) at 2.
[50] *Id*.
[51] *Id*.
[52] *Id*.

Crowley states that merchandise covered by the scope has two stacking frames and eight handling fittings, while their 53-foot marine containers have four stacking frames and 16 fitting handlings.[53] Therefore, Crowley asserts that the language of the scope precludes coverage of containers that have more than two stacking frames and eight handling fittings. We disagree that additional stacking frames and additional upper handling fittings are determinative with respect to Crowley's containers.

The second paragraph of the scope of the investigation states "{d}omestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers." This same paragraph further states that "{t}he AAR Specifications generally define design, performance and testing requirements for closed van containers, *but are not dispositive for purposes of defining subject merchandise within this scope definition*." (Emphasis added.) Specifically with respect to the stacking frames and handling fittings, the third paragraph of the scope states: "In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, *as required by the AAR Specifications*." ("Emphasis added.) The scope then describes the handling fittings that are on the stacking frames, noting that the stacking frames have four handling fittings on the top, and four on the bottom, for a total of eight per container. Accordingly, the stacking frame and handling fitting descriptions are derived from the AAR Specifications, which are explicitly stated as not dispositive of the scope.

In particular, the AAR specification, with respect to stacking frames and handling fittings, states the following:

> "4.1 Handling Fittings
>
> Refer to Figs. 13.1, 13.2, and 13.3 for positioning dimensions and manufacturing tolerances of lifting stacking aperture faces and openings. Design must provide for securement at the lower fitting locations to industry standard roadway chassis, flatbeds, COFC railcars, TOFC railcars, and double-stack railcars equipped with deck-mounted, low-profile, AAR-approved twist lock or pin locks. Handling fittings must be capable of utilizing manual, semiautomatic, and fully automatic interbox connectors when stacked in double-stack railcars as well as low-profile-type (3.375-in, maximum height cone) COFC pedestal and twist-lock devices."
>
> "4.1.2 Handling (Stacking Frame) Fittings for Containers Longer than 40 ft
> 4.1.2.1 Domestic containers will be equipped with either ISO or WTP upper stacking frame handling fittings (see Fig. 13.6 or Fig. 13.7) and bottom dual-aperture stacking frame handling fittings (see Fig. 13.9.) Upper and lower fittings must be located at the 40-ft stacking frame (intermediate) locations."

[53] *See* Crowley's Rebuttal Brief at 4.

In other words, each stacking frame must have two handling fittings on the top, and two on the bottom, for a total of four per stacking frame, and there are two stacking frames at the ends of the 40-foot center locations. [54]

Further, the AAR specifications state:

> "This specification is intended to provide minimum safe standards for the purchase and construction of containers to be used in the rail and highway modes of transport. The specification will identify the design and test parameters required for new domestic containers to ensure a minimum 15 years of useful service life based on 100 handling cycles per year. It is not the intent of this specification to place restrictions on the structural design methods or the use of any materials."[55]

The language of the AAR specification does not preclude additional stacking frames or handling fittings. Crowley's containers have the specified stacking frames and handling fittings at the specified locations.[56] Additionally, Crowley's products are designed for intermodal use and are capable of, and suitable for, double-stacking in intermodal transportation.[57] As noted above, the language of the scope states that "{c}ontainers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking in intermodal transportation, and otherwise meet the scope definition for the subject merchandise." By this language alone, Crowley's products are covered by the scope of the investigation.

Notwithstanding, Crowley notes that its products contain more than two stacking frames and more than eight handling fittings, and claims that this excludes its products from the scope.[58] However, there is no language in the scope dictating that a container having more than two stacking frames and more than four handling fittings is outside of the scope of the investigation. Rather, the Department finds that language in the scope reflects current AAR specifications which are not dispositive but currently represent a minimum requirement, not a limit, for stacking frames and handling fittings for containers covered by the scope of the investigation. Similarly, the wall strength of the containers, the weight, higher/deeper door headers and sills, and the interior width, are not distinguishing factors in the scope language. Therefore, these physical differences are not material for the purposes of determining whether a container is covered by the scope of the investigation.

An examination of the language of the Petition indicates that Petitioner concentrated on the dimensions of the product, and its suitability in intermodal situations, in asking for merchandise to be covered by the scope. For example, Petitioner stated in the Petition:

---

[54] *See* Petition at page 5 of Exhibit I-2.
[55] *Id*. at page 4 of Exhibit I-2.
[56] *See* Letter from Crowley to the Department, December 9, 2014 (Crowley Scope Submission) at 2.
[57] *Id*. at 2, and Note 6 at 3.
[58] *See* Crowley Case Brief at 2.

> "{a}t one time, various sizes of domestic containers were manufactured and/or imported and some are still currently in service in North America. However, due to both evolving regulatory changes and evolving economics, including increased reliance on and efficiencies in intermodal routes, the demand for shorter length domestic containers has significantly diminished.(5) The subject of this petition is the 53-foot and 53-foot high cube(6) domestic container."[59]

Note 5 (on page 5 of Volume I of the Petition) states:

> "{t}he federal regulatory scheme allows the several states to restrict the length of semitrailers on the highway system within their states. Most states have set 53 feet as the maximum permitted length. *See e.g*, Exhibit I-1. Thus, to some extent, the regulatory scheme drives the demand for intermodal transport logistics. 53-foot containers hold more freight and fit exactly within rail well cars designed to move them by rail. The 53-foot domestic container is the imported product causing material retardation to the United States industry. To the best of Petitioner's knowledge, domestic containers of lesser lengths are not currently manufactured for use in, or imported into, the U.S. market."[60] Note 6 (also on page 5 of Volume I of the Petition) states: "'{h}igh cube' refers to a container with a greater interior height. A 53-foot container has a minimum interior height of 107 inches. A high cube 53-foot domestic container has a minimum interior height of 109 318 inches."[61]

At page 6 of the Petition, Petitioner states:

> "{t}he subject merchandise is virtually identical (with respect to defining design and physical characteristics) to the domestic like product. Both the imported product and the domestic like product are designed and constructed to be placed on a container chassis for movement to the place of intermodal transfer, (typically a rail yard) where they are top-lifted off the chassis and placed on a rail well car. Domestic containers are specially designed to be double-stacked on the rail car. At the destination point, they are unloaded, and an individual domestic container is placed on a truck chassis and moved to its final or an interim destination where the contents are unloaded. Domestic containers are widely used in intermodal transportation because for shipment over longer distances, it is much less costly to complete most of the transport via rail than entirely by surface over-the-road transportation. In addition, the 53-foot length of the container allows for more freight to be shipped by means of the more economical intermodal move."[62]

[59] *See* Petition, April 23, 2014, Volume I at pages 3-4.
[60] *Id*. at 5.
[61] *Id*.
[62] *Id*. at 6.

On page 7 of the Petition at Note 8, Petitioner further states:

> "{o}ther 53-foot domestic containers that do not strictly conform to the AAR Specification are used in substantial quantities and are included in the scope definition provided *infra*. These domestic containers in general comply with the performance criteria defined in Section 5 of the AAR specification but do not conform to the interchangeable dimensions defined in the document. They have been designed to couple only with a specifically configured chassis while providing container to railcar and container to container interface. These containers are generally part of a private fleet which has contractual agreements with the railroads to handle their equipment, even without an AAR certification."[63]

Finally, at page 21 of the Petition, Petitioner states:

> "{o}ther types of shipping containers currently in use are not domestic like products. There is currently no U.S. production of ISO 20 foot and 40 foot ISO containers. These are used almost exclusively in the maritime trade to ship goods by vessel. There is currently no U.S. production of domestic containers in other than 53-foot lengths because the ability to operate domestic containers on the roadways and their compatibility with intermodal rail and chassis equipment makes shorter length domestic containers (with less capacity) inefficient."[64]

Moreover, the scope also states that "{a}ll domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container." Thus, we believe that the Petition and scope language clearly indicates that 53-foot containers, which are suitable for intermodal use on rail and especially truck chasses, are products intended to be covered by the scope. Crowley's products, according to the physical description, fall within these parameters.

Crowley misstates the Department's removal of the language regarding 20-foot and 40-foot ISO containers as the removal of a general exclusion for marine containers, and thus an expansion of the scope. Crowley is incorrect. As Petitioner noted, since the original scope language in the Petition excluded any containers under 48-feet, it was unnecessary for the scope to contain language that specifically excluded containers which were 20-foot and 40-foot in length. By definition, since these containers are physically under 48-feet, they are not intended to be covered by the scope of this investigation. Whether these are "marine" containers or not is irrelevant to determining if a container is covered by the scope of the investigation, as this is not a determining factor in the scope.

In addition, Crowley's comments with respect to whether or not Petitioner manufactures the merchandise in question are not relevant to this decision. We note that Petitioner, in the petition,

[63] *Id*. at 7.
[64] *Id*. at 21.

alleges that that the establishment of an industry in the United States is materially retarded by reason of unfair imports.[65] It is therefore not surprising that Petitioner may currently not manufacture the merchandise in question. Petitioner's active participation in this investigation and with respect to this scope question indicates an interest in the merchandise. Thus we do not believe that Crowley's statements concerning Petitioner's current manufacturing status of the product in question affect this analysis.

In summary, we have examined Crowley's request and claims, and the totality of the language of the scope of the investigation. Based upon our analysis, we find that Crowley's products, as listed in the Crowley Scope Submission, are covered by the scope of this investigation, and we have not modified the language of the scope.

Comment 2: Surrogate Value for Ocean Freight

Petitioner's Comments

- Petitioner states that in the *Amended Preliminary Determination*, the Department changed the surrogate value for Singamas for ocean freight to only include the charge for "basic ocean freight" to correct for its double-counting of brokerage and handling expenses.[66]

- Petitioner argues that in making this change, the Department improperly removed a component of international freight, *i.e.*, standard bunker adjustment, which is not accounted for in the domestic brokerage and handling expenses valued using the surrogate values sourced from *Doing Business 2014 Thailand*.[67]

- In particular, Petitioner explains that the Maersk price quotes encompass three expense categories: (1) international freight charges (including the standard bunker adjustment), (2) terminal handling charges at the destination (*i.e.*, the United States), and (3) domestic brokerage and handling charges at the origin (*i.e.*, the PRC).[68]

- Petitioner agrees that the inclusion of domestic brokerage and handling charges in the surrogate value for ocean freight resulted in double-counting.

- Petitioner states that respondents were afforded the opportunity to present their own suggested value for ocean freight or to rebut Petitioner's suggested surrogate value but declined to do so.[69]

- Therefore, Petitioner contends that in the final determination, the Department should correct the surrogate value for ocean freight to include the standard bunker adjustment factor.[70]

[65] *See* Petition, April 23, 2014, Volume I at page 1.
[66] *See* Petitioner's Case Brief at 22-24.
[67] *Id*. at 22-23.
[68] *Id*. at 23.
[69] *Id*. at 23.

Singamas' Comments

- Singamas argues that "surrogate value information is used to replace costs incurred from non-market economy (NME) sources with information from market economy sources, but it should not be used to fabricate additional costs not incurred by respondents at all."[71]

- Singamas contends that in its calculation, "Petitioner has sorted the surrogate values from the Maersk {Line} price quotation on the record into three categories that do not exist in the Maersk {Line} price quotation, and has placed the bunker charge under its own self-created category of 'total international freight charges.'"[72]

- Singamas argues that record evidence demonstrates that Singamas did not incur standard bunker adjustments on its U.S. shipments.[73] Specifically, Singamas states that it used market economy carriers for some of its shipments and that none of these market economy charges included an amount for a "standard bunker adjustment factor."[74]

- Singamas argues that Petitioner has offered no evidence to support its assertion that Singamas incurred a bunker charge on its U.S. shipments or its assumption that the standard bunker adjustment factor is a component of international freight.[75]

- For the above-mentioned reasons, for the final determination, the Department should continue to rely on the basic ocean charge from the Maersk {Line} price quotations as the basis for Singamas' NME-sourced ocean freight expenses.[76]

CIMC's Comments

- CIMC argues that the Department inadvertently deducted both a surrogate for international freight that included brokerage and handling, and an additional surrogate amount for brokerage and handling, on certain sales where CIMC incurred non-market ocean freight and brokerage and handling expenses.[77]

- CIMC states that because this is a double-counting of brokerage and handling expenses, the Department should deduct only surrogate international freight expenses as they already include brokerage and handling expenses.[78]

---

[70] *Id*. at 23-24.
[71] *See* Singamas' Rebuttal Brief at 6.
[72] *Id*.
[73] *Id*.
[74] *Id*.
[75] *Id*.
[76] *Id*. at 6-7.
[77] *See* CIMC's Case Brief at 33.
[78] *Id*. at 33-34.

- In addition, CIMC argues that the Department should not add a bunker adjustment to the surrogate international freight rate because there is no record evidence that CIMC incurred any such charges.[79]

- CIMC states that it provided international freight invoices from various freight service providers, that these invoices demonstrated the individual price components of the charges, and that they did not include bunker charges.[80]

- CIMC argues that since the actual international freight invoices do not show a "standard bunker adjustment" that Petitioner's comments are speculative and that the Department has no reasonable basis for making an upward adjustment to the proposed international freight surrogate value.[81]

Department's Position

With regard to CIMC's argument that the Department deducted twice a surrogate value for brokerage and handling on certain U.S. sales, we agree.

In the *Preliminary Determination*, the Department valued brokerage and handling expenses using a price list for charges related to exporting and importing a standardized cargo of goods in and out of South Africa as published in the World Bank's *2014 Doing Business in Thailand*.[82] The Department adjusted the reported gross unit price for those sales for which Singamas and CIMC incurred brokerage and handling expenses to account for such expenses. Additionally, where international freight was provided by PRC service providers or paid for in PRC RMB, the Department based those charges on surrogate rates from Maersk Line, a market-economy provider of international freight.[83]

After we issued the *Preliminary Determination*, Singamas argued that in relying on the "total" value provided in the Maersk Line price quotes (which range from USD 3,785.00 to USD 3,891.00 per container), the Department deducted brokerage and handling expenses twice from those sales for which Singamas incurred brokerage and handling expenses. Specifically, Singamas stated that the "total" Maersk Line price quote amount includes brokerage and handling expenses (*i.e.*, terminal handling, export, and documentation service fees, *etc*.). Therefore, as the Department relied on the "total" Maersk Line price quote for its adjustment for international freight expenses and also adjusted for brokerage and handling expenses as published in the World Bank's *2014 Doing Business in Thailand*, the Department, in effect, adjusted for brokerage and handling expenses twice.

[79] *See* CIMC's Rebuttal Brief at 9.
[80] *Id*. at 9-10.
[81] *Id*. at 10.
[82] *See* Memorandum to the File, "53-Foot Domestic Dry Containers from the People's Republic of China: Surrogate Values for the Preliminary Determination of the Less-Than-Fair-Value Investigation," dated November 19, 29194 (Preliminary Surrogate Value Memorandum), at 21.
[83] *Id. See also*, Letter from Petitioner to the Department entitled, "53-Foot Domestic Dry Containers from the Republic of China," dated September 22, 2014 (Petitioner's September 22nd Surrogate Value Submission) at Exhibit 12 (ocean freight price quotes from Maersk Line).

The Department agreed with Singamas and did not intend to adjust for brokerage and handling expenses twice. As a result, the Department issued its *Amended Preliminary Determination* which corrected this unintentional error. To correct for this error, the Department relied on the "basic ocean freight" price, exclusive of brokerage and handling expenses, as identified in the Maersk Line price quote at Exhibit 12 of Petitioner's September 22nd surrogate value submission. As no party argued this issue with respect to CIMC, no change was made to the Department's ocean freight surrogate value, with respect to CIMC, at the *Amended Preliminary Determination*. Given the above-mentioned discussion, we agree with CIMC that we inadvertently adjusted for brokerage and handling expenses twice. Therefore, for purposes of this final determination, we are excluding brokerage and handling related fees from the ocean freight surrogate value, with respect to CIMC, and will continue to exclude brokerage and handling related fees from the ocean freight surrogate value, with respect to Singamas.

We agree with Petitioner's argument that in making this change at the *Amended Preliminary Determination*, the Department improperly removed a component of international freight (*i.e.*, a "standard bunker adjustment fee") that is not accounted for in the domestic brokerage and handling expenses valued using the surrogate values sourced from *Doing Business 2014 Thailand*. As the "standard bunker adjustment fee" is unrelated to brokerage and handling expenses and, rather, related to international freight itself, this fee needs to be accounted for in the surrogate value for ocean freight. As noted by Petitioner, the "standard bunker adjustment fee" is not identified in the World Bank's *2014 Doing Business in Thailand*.[84] Furthermore, regarding respondents' statements that where they used market economy carriers for certain shipments these market economy charges did not include an amount for a "standard bunker adjustment factor," we agree with respondents that these market economy charges, as demonstrated on the various invoices, do not include a specific line item for "standard bunker adjustment factor." However, the ocean freight expenses incurred by respondents from those market economy providers represents the total value for ocean freight (*i.e.*, not broken out into various line item components). In other words, respondents have not demonstrated that that the ocean freight expenses incurred from market economy providers do not include a "standard bunker adjustment factor." We do not agree with respondents that we are adding an additional charge to our ocean freight surrogate value. Therefore, to ensure the surrogate value is complete, we are including it as part of the surrogate value. Respondents were afforded the opportunity to present their own suggested value for ocean freight or to rebut Petitioner's suggested surrogate value but declined to do so.

Comment 3: Surrogate Value for "Wood Flooring_Other"

Singamas' Comments

- Singamas states that in the *Preliminary Determination*, the Department incorrectly relied on a surrogate value for Singamas' consumption of "wood flooring_other" (FOP 2.17) using GTA data based on imports into Thailand of HTS number 4418.7900.000.[85]

[84] *See* Petitioner's September 22nd Surrogate Value Submission at Exhibit 9.
[85] *See* Singamas' Case Brief at 3-9.

- First, Singamas contends that during the POI, it imported wood flooring from the United States in order to produce the subject merchandise for certain of its customers and that when Singamas entered this flooring into the PRC, it was entered under HTS number 4409.29.1090.[86]

- Singamas states that it provided the relevant supporting documents, "including purchases order, entry documents, invoices, payment documentation, and accounting vouchers related to the purchase to confirm this categorization" and that "this fact was confirmed by the Department officials during the verification."[87]

- Second, Singamas argues that the domestically sourced wood flooring used in the production of the subject merchandise is "nearly identical" to the imported wood flooring used by Singamas and that the technical specifications on the record should "lead the Department to conclude that the domestically purchased wood flooring used in the production of the subject merchandise is essentially same as the imported wood flooring and, if imported, would be categorized under the same HTS number 4409.29.1090."[88]

- Moreover, according to Singamas, the fact that its customers "focus specifically on the type of wood flooring to be used, and that imported and domestic suppliers are equally qualified in customer purchase orders," demonstrates that imported and domestically sourced hardwood flooring are equivalent products.[89]

- Third, Singamas argues that the HTS number used by the Department in the *Preliminary Determination* does not accurately describe the input used by Singamas to produce the subject merchandise.[90]

- Singamas states "wood articles under HTS number 4418 are specifically processed wood items used for 'builders' joinery and carpentry of wood, including cellular wood panels, assembled parquet panels, and shingles and shakes"[91] and are for "assembled flooring" panels.[92] Singamas contends that by contrast, the HTS number used to import its wood flooring "far more accurately describes this input."[93] The distinction between assembled flooring under HTS number 4418 and unassembled flooring under HTS number 4409 is "critical."[94]

---

[86] *Id*. at 4.
[87] *Id*. at 9 where Singamas cites to the Department's verification report.
[88] *Id*. at 4-5.
[89] *Id*. where Singamas provides a comparison of technical specification on wood flooring among the purchase orders of its U.S. customers.
[90] *Id*. at 5-9.
[91] *Id*. at 6 where Singamas cotes to Petitioner's September 22, 2014, surrogate value submission for the relevant language for HTS 4418.
[92] *Id*. at 6-7.
[93] *Id*. at 7-8 where Singamas cites to Petitioner's September 22, 2014, surrogate value submission for the relevant language for HTS 4409.
[94] *Id*. at 8.

- Singamas also states that at verification, the Department noted that the wood flooring purchased by Singamas for the production of the subject merchandise is consistent with Hui Zhou Pacific Container Co., Ltd., (HPCL's) accounting recording for the consumption of wood flooring.[95]

- Singamas notes that that during its plant tour, Department officials toured a raw materials warehouse where it saw certain types of wood flooring, noted descriptions in its verification report, and that the Department's descriptions are "entirely consistent with HTS {number} 4409, which describes wood 'continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges.'"[96]

- For the above-mentioned reasons, and because (1) domestically sourced wood flooring used by Singamas is not fundamentally different from its imported wood flooring and (2) its customers' technical specifications for this aspect of the container are essentially identical, Singamas states that for the final determination, the Department should rely on a surrogate value taken from imports into Thailand under HTS number 4409.2900.090.[97]

CIMC's Comments

- CIMC argues that the Department should apply the surrogate value which CIMC submitted using HTS heading 4409.29, the HTS heading under which CIMC imported wood flooring from the United States during the POI.[98]

- CIMC avers that the Department would violate the statute were it not to select this HTS heading, as CIMC believes that it would result in an inaccurate margin calculation.[99]

- CIMC states that the Department, when selecting the surrogate value for wood flooring, should take into account its actual production experience and consider the effect of the surrogate value on the calculation of normal value.[100]

- CIMC notes that Singamas reported a per-cubic meter surrogate value for wood flooring based on imports into Thailand under HTS 4409.29, and that CIMC reported its wood flooring purchases, also imported under HTS 4409.29, from the United States that were paid for using U.S. Dollars. [101]

[95] *Id*. at 7 where Singamas cites to the Singamas' Verification Report and its response to section D of the Department's antidumping duty questionnaire (and excerpts of its questionnaire responses attached to its Case Brief).
[96] *Id*. at 8.
[97] *Id*. at 9.
[98] *See* CIMC's Case Brief at 28.
[99] *Id*. at 28-29.
[100] *Id*. at 29.
[101] *Id*.

- CIMC states that the Department's use of Petitioner's surrogate value for "assembled flooring panels" does not accurately reflect the type of flooring that CIMC consumed, as it is substantially more expensive that the price paid for wood flooring imported by CIMC from the United States.[102]

- CIMC avers that the surrogate value in the *Preliminary Determination* cannot be accurate if it is dramatically higher than the price paid to import the wood flooring from the United States.[103]

Petitioner's Comments

- Petitioner argues that the Department correctly valued CIMC's and Singamas' domestically-purchased laminated oak wood flooring panels with Thai HTS number 4418.79.00-000[104] in the *Preliminary Determination* and the *Amended Preliminary Determination* and should make no changes to this valuation in the final determination.[105]

- First, Petitioner argues that the classification of respondents' laminated oak wood flooring panels according to PRC Customs declaration forms is not dispositive and that the Department "weighs the totality of the record evidence in determining the appropriate tariff classification."[106]

- Petitioner states that "this is not the first case where the HTS classification on a PRC Customs declaration form was incorrect and inconsistent with record evidence and the appropriate classification established by the World Customs Organization ('WCO') and adopted by WCO signatory countries such as Thailand and the United States."[107]

- Second, Petitioner argues that record evidence supports Thai HTS number 4418.79.00-000 as the appropriate classification for respondents' laminated oak wood flooring panels and that Singamas' argument that Thai HTS number 4409.29.00-090 is the correct valuation because its laminated oak wood flooring panels (1) have grooved edges and (2) are unassembled boards, not assembled flooring panels, is misplaced.[108]

- Petitioner states that this physical characteristic is not dispositive and that according to the explanatory notes for HTS heading 4418, the physical characteristic of "grooved

[102] *Id*. at 30.
[103] *Id*.
[104] We note that in instances were HTS numbers include a "-" (*e.g.*, 4418.79.00-000), the "-" denotes a range of numbers covered by this HTS subheading.
[105] *See* Petitioner's Rebuttal Brief at 10-15.
[106] *Id*. at 10-11.
[107] *Id*. at 10 where Petitioner cites to *Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) and accompanying Issues and Decision Memorandum at Comment 6 and *Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1.
[108] *Id*. at 11-13.

edges" can be a characteristic of the assembled flooring panels classified under HS heading 4418.[109] Additionally, according to Petitioner, the laminated oak wood flooring panels used by Petitioner and "viewed by the Department on its plant tour are identical or nearly identical to those used by {r}espondents."[110] Furthermore, the production process of the laminated oak flooring panels used in domestic containers, as described by Petitioner, is "clearly an assembly of individual wood strips into a finished laminated flooring panel."[111]

- Petitioner contends that classification of the laminated oak wood flooring panels under HTS heading 4418 is further supported by U.S. Customs and Border Protection (CBP) rulings.[112] Specifically, Petitioner cites to CBP Ruling H011956 where CBP reviewed the classification of certain wood panels which were of "substantially similar characteristic as the wood flooring panels used for domestic containers" and "denied the requestor's position that the wood flooring panels are classified in heading 4409."[113] Petitioner states that a key distinction made by CBP in this ruling was that HS heading 4409 "'addresses only shaping and planing operations' and does not encompass products 'which have been subjected to lamination operations as well as shaping processes.'"[114]

- Third and finally, Petitioner argues that the average unit values for Thai HTS numbers 4409.29 and 4409.29.00-090, as proposed by respondents, are aberrational based on a series of "benchmark" prices.[115] These "benchmark" prices include, *e.g.*, (1) the prices paid to certain suppliers of similar merchandise, (2) the price per kilogram for Thai imports of (a) "assembled flooring panels other than multilayer panels and mosaic floors" (*i.e.*, Thai HTS number 4418.79.00-000, solid wood flooring panels) and (b) "assembled multilayer flooring panels" (*i.e.*, Thai HTS number 4418.72.00-000) versus the price range for imports of the same product into the other economically comparable countries as identified in the Department's surrogate country list, (3) the price range for imports classified under HTS number 4409.29 into the other economically comparable countries identified in the Department's surrogate country memo, (4) the price per cubic meter for Thai imports of "oak logs" versus Thai imports of other "non-coniferous, non-tropical logs," and (5) Thai imports of "sawdust" (which are higher in price than respondents' suggested HTS number for wood flooring).[116]

Department's Position

In the *Preliminary Determination*, we valued both CIMC's and Singamas' wood flooring FOP using Thailand HTS number 4418.79.00-000. After reviewing record evidence, we agree with Petitioner and continue to value both CIMC's and Singamas' wood flooring FOP using Thailand

[109] *Id*. at 11.
[110] *Id*.
[111] *Id*. at 12.
[112] *Id*. at 13 where Petitioner cites to CBP Ruling H011956 (April 18, 2008).
[113] *Id*.
[114] *Id*.
[115] *Id*. at 13-15.
[116] *Id*. at 14-15.

HTS heading 4418.79.00-000 for the final determination, and not 4409.29 as suggested by respondents.

HTS heading 4418 covers "builders' joinery and carpentry of wood, including cellular wood panels and assembled flooring panels; shingles and shakes."[117] The subheading 79 covers "other."[118] Throughout this investigation, Petitioner has submitted evidence on the record to support its contention that both CIMC's and Singamas' wood flooring should be valued using HTS heading 4418.79.00-000. We determine that evidence on the record submitted by both CIMC and Singamas, and our observations at verification, also support a valuation of the wood flooring surrogate using 4418.79.00-000.

In order to ascertain the proper HTS heading for valuing the wood flooring FOP for both CIMC and Singamas, we examined the record evidence to answer two questions. First, what is the proper HTS heading classification for "assembled wood flooring?" Second, are CIMC's and Singamas' wood floorings properly classified under "assembled wood flooring" or is some other classification more appropriate? Our findings are discussed below.

With respect to the first question, Petitioner submitted on the record the explanatory notes from the World Custom Organization for HTS headings 4418 and 4409.[119] For HTS heading 4418, the explanatory notes indicate that this HTS "covers solid blocks, strips, friezes, etc., assembled into flooring panels or tiles, with or without borders," while the HTS heading 4409 "specifically excludes '… wood assembled into panels being builders' carpentry or joinery (e.g., assembled flooring panels …) (heading 44.18)'"[120] Additionally, we examined the ruling (Ruling H011956) from CBP regarding what Petitioner stated was "of substantially similar characteristic as the wood flooring panels used for domestic containers."[121] We note that although we reviewed the ruling, rulings are not dispositive for purposes of our analysis. Dated April 18, 2008, the Ruling states in part:

[117] *See* Letter from Petitioner to the Department, dated September 29, 2014 (Petitioner's Rebuttal SV Comments) at 5, and Exhibit IIB-1.
[118] *Id*.
[119] *Id*. at 5 and Exhibit IIB-2
[120] *Id*.
[121] *Id*. at 5. Petitioner also submitted a copy of a prior CBP Ruling HQ, 950606 (April 15, 1992), in Exhibit 2 of Petitioner's Rebuttal SV Comments. At page 6, Petitioner also states the following: "The February 3, 2007, date referenced in CBP Ruling H011956 is significant, as it represents the effective date of Presidential Proclamation 8907 (December 29, 2006). That Proclamation implemented changes to the international nomenclature of the Harmonized Commodity Description and Coding System, pursuant to the Harmonized System Convention, administered by the World Customs Organization (WCO). Prior to February 3, 2007, the wood flooring panels used in the subject merchandise at issue in the instant investigation may well have been classified in heading 4412. Indeed, this is entirely consistent with a 1992 Customs Service Ruling which specifically examined the classification of flooring panels used for cargo containers imported from several countries (including China). There, Customs ruled that the flooring panels used for cargo containers were classified in HS heading 4412. *See* Customs Ruling HQ 950606 (April 15, 1992). However, due to the classification changes effectuated by WCO and implemented by Presidential Proclamation 8907, the flooring panels are now classified in heading HS 4418. Importantly, at no time does any authority support the classification" of the merchandise under HTS heading 4409. *See* also Letter from Petitioner to the Department, dated November 5, 2014 (Petitioner Pre-Preliminary Comments) at Exhibit 2. Petitioner also submitted a copy of Customs Ruling HQ 950606 (April 15, 1992) in Exhibit 2 of this submission.

> "Heading 4409 provides for 'Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V -jointed, beaded, molded, rounded, or the like) along any of its edges, ends or faces, whether or not planed, sanded, or finger-jointed.'"[122]

and

> "However, we disagree that the "assembled" flooring is classified in heading 4409, HTSUS. In Boen Hardwood Flooring, Inc. v. United States, 196 F. Supp 2d. 1331, (2002), reversed on other grounds, 357 F.3d 1262, the Court of International Trade addressed the classification of laminated flooring claimed to be classified in subheading 4409.29.50, HTSUS. In that decision, the court stated: 'The suggested characterization, "wood flooring," does not appear in heading 4409, HTSUS; rather, it is a subheading listed under heading 4409. Heading 4409, HTSUS, mentions only shaping operations, and it is clear from the Chapter Note and Explanatory Note that merchandise falling under heading 4412, may have been subjected to any of these shaping operations.' Id. at 1342. Heading 4409, HTSUS, addresses only shaping and planing operations, while heading 4412, HTSUS, encompasses products which have been subjected to lamination operations as well as shaping processes. Heading 4409, HTSUS, therefore does not provide a complete and accurate description of the subject merchandise. Furthermore, 44.09 EN exclusion (b) states that heading 4409 excludes: 'Wood which has been mortised or tenoned, dovetailed or similarly worked at the ends and wood assembled into panels being builders' carpentry or joinery (e.g., parquet flooring panels made up from parquet flooring blocks, strips, etc., whether or not on a support of one or more layers of wood)' (heading 44.18). The product at issue is assembled wood panels. As such, the flooring cannot be classified in heading 4409, HTSUS."[123]

With respect to the question of whether or not CIMC's and Singamas' wood flooring is "assembled wood flooring," we find that record evidence demonstrates that, for both respondents, HTS 4418 provides the proper classification. As part of its surrogate value comments, Petitioner stated that "Domestic containers typically (but not exclusively) conform to the specifications of the American Association of Railroads ("AAR") Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers For Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 ("AAR Specifications"). Section 5.3.11.3 of M 390 states that '*the floor shall be laminated hardwood (12% kiln dried) or equivalent composite material. The minimum strength properties must equal or surpass those of white oak.*'"[124] CIMC's product brochure indicates that many of its domestic

[122] *Id*. at Exhibit 2
[123] *Id*. As noted earlier, Petitioner noted in Petitioner's Rebuttal SV Comments, at page 6, that prior to February 3, 2007, merchandise classified under HTS heading 4418 was instead classified under HTS heading 4412.
[124] *See* Petitioner's Rebuttal SV Comments at 4, footnote 5.

dry containers are AAR compliant.[125] Singamas also states that its domestic dry containers are AAR compliant.[126]

In response to the Department's Second Supplemental Questionnaire, CIMC submitted information on the record regarding its wood flooring.[127] Exhibit 6 contains pictures of flooring imported from a market economy source, and shows that the flooring construction is of assembled strips of wood.[128] The flooring is similar to the type of flooring that the Department examined at verification during a plant tour of one of Singamas' production facilities.[129] Based on CIMC's submitted information in Exhibit 6 of the Second Supplemental Questionnaire and our findings at the verification for Singamas, the flooring purchased by both CIMC and Singamas from market economy sources is similar or identical to the flooring that Petitioner purchases.[130] Additionally, contracts with customers for both CIMC and Singamas specify that both respondents provide laminated wood flooring whose description comports with "assembled wood flooring" as described under HTS heading 4418.79.00-000.[131] Additionally, both CIMC and Singamas indicate that their domestically sourced wood flooring is nearly identical to the wood flooring which they purchased from market economy sources.[132] Therefore, based on information on the record, we determine that CIMC and Singamas consumed laminated "assembled wood flooring" in the production of domestic dry containers.

Both CIMC and Singamas argue that the Department should assign the FOP surrogate value based on Thailand imports under HTS heading 4409.29.[133] Both CIMC and Singamas state that they imported wood flooring into the PRC for use in domestic dry containers under this HTS heading, and that the Department should therefore use the same heading when assigning the FOP surrogate value for wood flooring.[134] We disagree. We believe that the record evidence, including the description of the product, the CBP ruling, and both CIMC's submissions and our observations at verification, as described above, indicate that 4418.79.00-000 is the more appropriate HTS heading classification with which to value the wood flooring input. Furthermore, the Department has, in previous cases, assigned a different HTS heading for surrogate value purposes than the HTS under which merchandise was imported because the

[125] *See* Letter from CIMC to the Department, dated July 10, 2014, at Attachment 1.
[126] *See* Letter from Singamas to the Department, dated July 10, 2014. Singamas states, at page 1, that "General information on the subject merchandise can be found at Singamas's website at http://www.singamas.com/main/dprodlist.asp?cat=FIFTY3" The website indicates that its 53-foot domestic dry containers are AAR compliant.
[127] *See* Letter from CIMC to the Department, dated October 30, 2014, (Second Supplemental Questionnaire Response) at 5 and Exhibit 6.
[128] *Id*. at Exhibit 6.
[129] *See* Singamas Verification Report at 21.
[130] Petitioner describes its wood flooring construction as follows: "Each floorboard is constructed by gluing strips of oak to build the desired floor width. Each strip of oak is approximately 1 1/4in wide. To produce a continuous board, hook joints are used to join strips. Industry standard is to have a minimum of 3 inches separate joints in adjacent strips. After construction of the board the board is planed to the required thickness." *See* Petitioner's Rebuttal SV Comments at 4.
[131] *See, e.g.*, Letter from CIMC to the Department, dated October 30, 2014 (Third Supplemental Response) at Exhibit 1. *See also* Letter from Singamas to the Department, October 30, 2014 (October 30 SQR) at Exhibits A-61 through A-64.
[132] *See, e.g.*, Second Supplemental Response at 5; Singamas Case Brief at 4.
[133] *See* CIMC's Case Brief at 30; Singamas Case Brief at 3.
[134] *Id*.

selection of the surrogate value is based on the physical specifics of the factor used in the production of subject merchandise rather than how the factor was classified by another agency.[135]

Additionally, CIMC argues that the Department should use 4409.29 because the resulting surrogate value from the use of 4418.79.00-000 is aberrational.[136] CIMC argues that the difference in the value between the price it paid for imports of wood flooring into the PRC from market economy sources and the surrogate value under HTS heading 4418.79.00-000 "cannot be accurate when the per-cubic meter value exceeds so dramatically the price that CIMC paid to import wood flooring from the United States."[137] However, as Petitioner notes, the difference between the prices paid by both CIMC and Singamas for wood flooring imported from a market economy source and the surrogate value under HTS heading 4409.29 is substantially greater.[138] The Department determines that the physical characteristics of the wood flooring in question are the best indicators of the proper HTS heading classification, not the relationship to the prices of other types of flooring or other purchases. Furthermore, the price respondents paid for its import cannot serve as a benchmark for the surrogate value since these prices are for imports into a non-market economy.

Singamas argues that the Department discovered at verification that its flooring had physical characteristics which indicated that HTS heading 4409.29 is the proper classification for the FOP wood flooring surrogate.[139] Singamas also argues that its wood flooring purchases are in sets, and thus unassembled.[140] However, we note that the description of the "assembled wood flooring" under HTS heading 4418.79.00-000 states that "{t}his heading also covers solid blocks, strips, friezes, etc., assembled into flooring panels (including parquet panels) … These panels or tiles may be tongued and grooved at the edges to facilitate assembly."[141] The language indicates that "assembled wood flooring" may also have grooves and may be assembled into other items, which describes exactly the wood flooring assembled by Singamas and CIMC in the production of their domestic dry containers.[142]

For all of the reasons set forth above, we continue to determine that both CIMC's and Singmas's "wood flooring_other" input is best valued using the surrogate value for Thai imports under HTS heading 4418.79.00-000.

---

[135] *See, e.g., Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) and accompanying Issues and Decision Memorandum at Comment 6.
[136] *See* CIMC's Case Brief at 29-30.
[137] *Id*. at 30.
[138] *See* Petitioner's Rebuttal Brief at 13-15.
[139] *See* Singamas Case Brief at 8.
[140] *Id*. at 7.
[141] *See* Petitioner's Rebuttal Brief at 11, quoting Petitioner's Rebuttal SV Submission at Exhibit IIB-2.
[142] *See* Singamas Verification Report at 21.

Comment 4: Whether to Deduct Return Transportation Costs for Wide-Top Pick (WTP) Lift-Off Bars from U.S. Net Price

Petitioner's Comments

- Petitioner states that at verification, the Department discovered that WTP lift-off bars were shipped back to the PRC at Singamas' expense and that in the final determination, the Department should deduct the shipping expenses for the WTP lift-off bars in the calculation of U.S. net price for each U.S. sale where respondents incurred such expenses.[143]

- Petitioner argues that in its calculation of the shipping expenses, the Department should not rely on the charges collected at verification because (1) the charges do not fully account for all expenses that would have been incurred by Singamas or its affiliates to ship the WTP lift-off bars back to the PRC, (2) the Department does not know whether the shipping services for all containers shipped back to PRC were provided by market economy (ME) or NME agents and carriers, and (3) the intent of verification is not to collect new information to be used in the Department's calculations but rather to verify information already on the record of the investigation.[144]

- Based on expense information placed on the record by Petitioner prior to verification and the factual information deadline, Petitioner calculated the shipping cost of each individual WTP lift-off bar as well as the total per-container WTP lift-off bar return shipping cost.[145]

- Petitioner argues that the shipping cost of each individual WTP lift-off bar "encompasses all expenses that would have been incurred by Singamas or its affiliates to ship each individual WTP lift-off bar back to {the PRC} China," including "(1) brokerage/handling expenses in the United States, (2) international freight costs, and (3) brokerage/handling expenses and inland freight expenses in {the PRC} China."[146]

Singamas' Comments

- Singamas argues that the Department should not deduct return transportation costs for the WTP lift-off bars in the calculation of U.S. net price, as argued by Petitioner, because to make this deduction would result in a double-counting of Singamas' costs.[147]

- Singamas contends that WTP lift-off bars are "a common tool for the ocean shipment of both subject and non-subject containers, and are treated as fixed assets of the company"

[143] *See* Petitioner's Case Brief at pages 12 and 17.
[144] *Id*. at 12-13 and 17-18.
[145] *Id*. at 14 and 18-19 (where Petitioner cites to its September 22, 2014, surrogate value submission, Singamas' October 27, 2014, and October 30, 2014, responses to the Department's supplemental questionnaires (October 27th SQR and October 30th SQR, respectively)).
[146] *Id*. at 15 and 19.
[147] *See* Singamas' Rebuttal Brief at 2-4.

and that it "treats the costs associated with the return of these WTP lift-off bars as part of the company's general and administrative ('GNA') expenses."[148]

- Singamas states that the Department investigated these expenses at verification, and found that the expenses related to the return shipping of the WTP lift-off bars were recorded in Singamas' books and records as part of GNA expenses.[149]

- Singamas argues that since these expenses are included as part of the company's GNA rate, the surrogate financial ratio for GNA expenses used by the Department "implicitly covers these costs, and to make a further deduction for these expenses would effectively constitute an unwarranted double{-}counting of costs."[150]

- Singamas cites to *Tetrafluoroethane from the PRC*,[151] in which Petitioner in that case argued that the Department should adjust a respondent's U.S. sales price by deducting the shipment expenses associated with the return of the respondent's empty ISO tanks to the factory.[152] Singamas states that the Department rejected that argument, noting that "expenses related to Chinese customs declaration and transportation costs associated with returning the empty ISO tanks through Chinese customs and transport from the port to Bluestar's {respondent in that case} factory" are not defined as "price adjustments" under 19 CFR 351.102(b).[153] Singamas argues that because the relevant facts in this case are identical to those in *Tetrafluoroethane from the PRC*, the Department should reach the same conclusion here.[154]

- Moreover, Singamas argues, notwithstanding Petitioner's "groundless" assumption that Singamas' WTP lift-off bars were all returned through NME carriers, Petitioner's "constructed" benchmarks for the return of the WTP lift-off bars is "not even supported by Petitioner's own benchmarks information."[155]

- Specifically, Singamas argues that Petitioner's calculation is "based on the benchmark of Maersk Line's basic ocean freight for the transportation of an empty container from a Chinese departure port to a U.S. destination port, but this is the reverse of the shipment direction for WTP {lift-off bars} fixtures returned from the United States to {the PRC} China."[156] Singamas contend that while the transportation distance is the same, "nothing on the record shows that Maersk {Line} would charge the same freight for shipments to {the PRC} China" and that "transportation costs are undoubtedly affected by factors

[148] *Id*. at 2.
[149] *Id*.
[150] *Id*.
[151] *See 1, 1, 1 ,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sale at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) (*Tetrafluoroethane from the PRC*) and accompanying Issues and Decision Memorandum at Comment 5.
[152] *Id*. at 2.
[153] *Id*. at 2-3.
[154] *Id*. at 3.
[155] *Id*.
[156] *Id*. at 4.

other than shipment distances, such as the overall supply and demand for transportation services, and one cannot simply assume that the same transportation distance in any direction will yield the same transportation cost."[157]

CIMC's Comments

- CIMC claims that the transportation expenses that it incurred to return the WTP lift-off bars to the PRC are overhead expenses, which are already accounted for by the surrogate overhead ratio that the Department applied in the antidumping duty margin calculation.[158]

- CIMC states that the Department confirmed during verification that CIMC incurred a "modest" international freight expense to return the WTP lift-off bars to the PRC, and that CIMC's factories all paid international freight service providers to ship the WTP lift-off bars to the PRC.[159]

- CIMC argues that "record evidence, the Department's regulations, and past Department practice" support their contention that the international freight expenses incurred to return WTP lift-off bars should be treated as overhead expenses and thus covered by the surrogate overhead ratio.[160]

- CIMC states that there are two WTP lift-off bars per container, not four as Petitioner suggested, and that an affiliate in the United States removes the bars and stores them until there are enough (about 160) to ship them back in a 20-foot ISO marine container.[161]

- CIMC further states that all WTP lift-off bar-related costs are booked as factory overhead and CIMC does not consider any of the related expenses to be part of the sale or delivery of the domestic dry containers to the United States.[162]

- CIMC cites to 19 CFR 351.401(c), which states that the Department will make price adjustments to U.S. price only when such adjustments are reasonably attributable to the subject merchandise.[163]

- Additionally, citing to *Tetrafluoroethane from the PRC*,[164] CIMC argues that "the Department's established practice is to treat freight, brokerage and handling, and other expenses related to the movement of reusable hardware and other items needed to move and deliver the merchandise under investigation or review as factory overhead, because the expenses incurred do not relate to the movement and delivery of the subject merchandise."[165]

[157] *Id*.
[158] *See* CIMC's Rebuttal Brief at 6.
[159] *Id*.
[160] *Id*.
[161] *Id*. at 7.
[162] *Id*.
[163] *Id*.
[164] *Tetrafluoroethane from the PRC* and accompanying Issues and Decision Memorandum at Comment 5.
[165] *Id*.

- While arguing that the Department should treat the expenses related to WTP lift-off bar returns as overhead, CIMC nevertheless avers that, if the Department ultimately concludes to deduct these expenses from CIMC's U.S. net prices, the Department should use the per-unit return freight amount that CIMC actually incurred and examined during verification.[166]

Department's Position

In their questionnaire responses, both CIMC and Singamas reported that they incurred WTP lift-off bar removal fees for certain sales once the shipment of domestic dry containers arrives at the port of importation.[167] Petitioner argues that the Department should deduct the shipping expenses for the WTP lift-off bars in the calculation of U.S. net price for each U.S. sale where respondents incurred such expenses. We disagree with Petitioner.

During the verifications of both respondents, Department officials requested that company officials explain what happened with the WTP lift-off bars once they are removed from the subject merchandise prior to delivery to the customer. Company officials explained and supported by record evidence that the WTP lift-off bars are returned to CIMC and Singamas so that it can be reused for additional shipments.[168] Both CIMC and Singamas explained that the WTP lift-off bar return expenses are recorded as GNA and/or overhead expenses in their books and records.[169]

For the final determination, the Department will continue to consider the return fees in question as GNA and/or overhead expenses rather than as an adjustment to sale price. The Department agrees with respondents with respect to the treatment of these return expenses associated with WTP lift-off bars as a GNA and/or overhead expense that is captured in the surrogate financial ratios. Section 772(c)(2) of the Tariff Act of 1930, as amended (the Act), provides that the Department may reduce the price used to establish export price or constructed export price in the following instances:

> (A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and (B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

[166] *Id*. at 7-8.
[167] WTP lift-off bar removal fees are expenses incurred for removing the WTP lift-off bars, a mechanism attached to the subject merchandise to enable lifting equipment to lift the subject merchandise prior to its delivery to the customer. *See* CIMC's CQR at C-36; *see also* Singamas' CQR at C-4.
[168] *See* CIMC's Verification Report at 26; *see also* Singamas' Verification Report at 14.
[169] *See* Singamas' Verification report at 14; *see also* CIMC's Rebuttal Brief at 6; *see also* Singamas' Rebuttal Brief at 2.

We further note that 19 CFR 351.401(c) directs the Department to use, in calculating U.S. price, a price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Expenses related to transportation costs associated with returning the WTP lift-off bars from the port of importation to respondents' factory are not included in this definition.[170]

We find that it is inappropriate to decrease either respondent's gross unit price as a result of transportation expenses associated with bringing the WTP lift-off bars from the port of importation to respondents' factory. Such expenses should be attributable to GNA and/or overhead, and not as a selling adjustment. We agree with respondents that these expenses are captured in the surrogate GNA ratio. Therefore, we have not adjusted the respondents' U.S. sales prices for the expenses related to bringing the WTP lift-off bars back to respondents' factories.

B. CIMC-Specific Issues

Comment 5: Proper Valuation of Ocean Freight and Brokerage and Handling Expenses

CIMC's Comments

- CIMC claims that the Department inadvertently deducted both market economy and non-market economy brokerage and handling expenses for certain sales where CIMC reported that it incurred market economy expenses for brokerage and handling, thus double-counting the deduction of these expenses.[171]

- CIMC states that the Department should correct this double-counting deduction by deducting only the market-economy brokerage and handling expenses for these sales.[172]

- In response to Petitioner's brief, CIMC argues that the Department should continue to calculate the antidumping duty margin for CIMC using the international freight, brokerage and handling charges reported as "market economy" expenses in the sales database fields INTNFRU (international freight expenses) and DMEBROKU (brokerage and handling expenses incurred in ME currency by a ME provider).[173]

[170] *See, e.g., Tetrafluoroethane from the PRC* and accompanying Issues and Decision Memorandum at Comment 5; *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 10; and *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 16.
[171] *Id*. at 33.
[172] *Id*.
[173] *See* CIMC's Rebuttal Brief at 3.

- CIMC claims that it sourced these expenses from a market economy provider, specifically a Hong Kong-based affiliate, and paid for the services using a market economy currency.[174]

- CIMC states that, despite allegations by Petitioner, it demonstrated during verification that the rates paid for these services were nearly identical to amounts charged by non-affiliated market-economy providers to the Hong Kong-based affiliate, thus demonstrating that the charges incurred by CIMC from the Hong Kong-based affiliate were at arm's-length.[175]

- CIMC asserts that it reported all brokerage and handling expenses for the United States incurred during the POI for shipments of empty domestic dry containers in the DMEBROKU field, and that for these same transactions CIMC reported "yes" in the DBROKU (brokerage and handling expenses) field to denote that it also incurred non-market economy domestic brokerage and handling expenses.[176]

- CIMC concludes by stating that "the Department in the final determination should not deduct in the calculation of CIMC's US net prices the additional proxy amount for US brokerage and handling expenses proposed by petitioner because such a deduction would result in a double-counting of the US brokerage and handling expenses that CIMC incurred during the POI and already reported in field "DMEBROKU" in the company's US sales database."[177]

Petitioner's Comments

- Petitioner notes that, at verification, the Department determined that a number of transportation services were being provided to CIMC by affiliated parties.[178]

- Petitioner asserts that CIMC failed to disclose the affiliations prior to verification, and failed to disclose all of the affiliated parties involved in transportation services during verification.[179]

- Petitioner further argues that the Department's normal practice, when faced with the fact pattern present in this instance, is to require a respondent to establish a payment link between a market economy ocean freight carrier and a non-market economy agent, but that this information does not exist because CIMC did not demonstrate evidence of payment from the non-market economy agent to the market economy ocean carrier.[180]

[174] *Id*.
[175] *Id*. at 4.
[176] *Id*. at 5.
[177] *Id*. at 6.
[178] *See* Petitioner's Case Brief at 7.
[179] *Id*. at 7-9.
[180] *Id*. at 9.

- Petitioner argues that the Department should reject CIMC's claimed market economy expenses because CIMC did not disclose the link between the affiliated parties and their involvement in the transportation expenses.[181]

- Petitioner concludes that the Department should value CIMC's reported market economy transportation expenses, denoted in the fields INTNFRU and DMEBROKU, with surrogate values of $3,040 for INTNFRU (which includes a "standard bunker adjustment factor") and $385 for DMEBROKU.[182]

- Petitioner notes that while CIMC stated that the three manufacturing companies did not incur any transportation expenses other than those reported in the fields USDUTYU (U.S. duty expenses) and WTPBARFEE (WTP lift-off bar removal fees), CIMC did not state whether there were any expenses incurred by its previously undisclosed affiliated transportation companies.[183]

- Petitioner further notes that, for sales of empty containers, CIMC (or affiliated transportation service providers) was generally responsible for costs associated with importation, and that contracts with CIMC's customers specify CIMC's responsibility for certain transportation expenses.[184]

- Petitioner reasons that, because CIMC failed to disclose additional U.S. brokerage and handling expenses that it was obligated to pay, the Department must resort to facts available for these expenses and deduct $615 per container on sales of empty containers.[185]

Department's Position

As noted above in Comment 2, we agree with CIMC that the Department inadvertently deducted both a surrogate for international freight that included brokerage and handling, and an additional surrogate amount for brokerage and handling, on certain sales where CIMC incurred non-market ocean freight and brokerage and handling expenses in the *Preliminary Determination*.

Additionally, we agree with CIMC that the Department inadvertently deducted both a market economy and a non-market economy figure for brokerage and handling expenses on those sales where CIMC reported that it incurred market economy brokerage and handling expenses in the *Preliminary Determination*. However, for the reasons set forth below, this issue is now moot.

We agree with Petitioner that the value of CIMC's reported market economy transportation expenses, denoted in the fields INTNFRU and DMEBROKU, should be replaced with surrogate values. 19 CFR 351.408(c)(1) provides that "{w}here a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use

[181] *Id*.
[182] *Id*. at 10.
[183] *Id*.
[184] *Id*. at 11.
[185] *Id*. at 12.

the price paid to the market economy supplier." However, it is the Department's practice to require a respondent to be able to trace payment for claimed market economy international movement expenses from the respondent through any non-market economy agents to the market economy carrier.[186] As the Department stated in *Photovoltaic Cells*, "{t}his link is necessary to demonstrate that the price paid to the Chinese freight forwarder was set by the ME service provider, rather than by the Chinese freight forwarder or some other NME middleman between the Chinese freight forwarder and the ME ocean freight provider."[187] The Department's practice requiring adequate evidence of the market economy purchase of ocean freight has been upheld by the Court of International Trade.[188]

In this instance, CIMC claimed that certain sales incurred market economy expenses for ocean freight as well as brokerage and handling, and that CIMC purchased these services from a market economy supplier using a market economy currency.[189] CIMC clarified at verification "that all of the market-economy international freight and market economy brokerage and handling services that CIMC sourced and paid for during the POI were provided by {a company}, which is a Hong Kong-based affiliate of CIMC.[190]

The Department discovered the involvement of previously unreported affiliated parties in the purchase and provision of the claimed market economy international movement expenses during verification.[191] At verification, the Department examined certain sales where CIMC incurred market economy ocean freight and brokerage and handling expenses.[192] In each sale, evidence on the record indicates that the market economy ocean carriers did not issue invoices to the CIMC affiliate based in Hong Kong, but to a different NME company.[193] None of the verification exhibits contains an invoice from the NME company to CIMC's Hong Kong-based affiliate, but each verification exhibit does contain an invoice from CIMC's Hong Kong-based affiliate to CIMC.[194] In all instances, the price charged by the Hong Kong-based affiliate is higher than the price charged by the market economy ocean freight provider to the NME company.[195] Additionally, while Verification Exhibit 10 indicates payment of the amount charged by the Hong Kong-based affiliate, we do not have payment information for the other freight invoices examined.[196]

---

[186] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) and accompanying Issues and Decision Memorandum at Comment 8; and *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Photovoltaic Cells*) and accompanying Issues and Decision Memorandum at Comment 20.
[187] *See Photovoltaic Cells*, Issues and Decision Memorandum at Comment 20.
[188] *See Luoyang Bearing Corp. v. United States*, 347 F. Supp.2 d 1326, 1349-502 (CIT 2004).
[189] *See* Second Supplemental Questionnaire Response at 12-16.
[190] *See* CIMC's Rebuttal Brief at 3.
[191] *See* CIMC's Verification Report at 6, and Verification Exhibit 10 at page 64A, Verification Exhibit 13 at pages 31-32, Verification Exhibit 14 at pages 32-33, and Verification Exhibit 15 at pages 31-32.
[192] *See* CIMC's Verification Report at 22 – 25, Discussing Verification Exhibits 10, 13, 14, and 15.
[193] *See* CIMC's Verification Report, Verification Exhibit 10 at page 64A, Verification Exhibit 13 at pages 31-32, Verification Exhibit 14 at pages 32-33, and Verification Exhibit 15 at pages 31-32.
[194] *See* CIMC's Verification Report, Verification Exhibit 10 at page 64, Verification Exhibit 13 at page 30, Verification Exhibit 14 at page 31, and Verification Exhibit 15 at page 30.
[195] *Id*.
[196] *See* CIMC's Verification Report, Verification Exhibit 10 at pages 63-69.

The Department requested, prior to verification, that CIMC report all of its affiliated parties involved in the production or sale of domestic dry containers.[197] The Department also specifically asked if CIMC paid for the international movement expenses using an agent, and CIMC stated that it paid directly to a market economy supplier and did not use an agent.[198] The Department subsequently discovered at verification that the market economy supplier was an affiliated party. In fact, as noted above, CIMC failed to disclose numerous affiliated parties associated with the procurement and provision of the claimed market economy international movement expenses until verification. At verification, CIMC did not fully explain the nature or functions of each of the affiliated companies involved in the procurement and provision of these expenses. Information on the record from verification thus indicates an incomplete paper trail from a market economy ocean freight provider to CIMC, no explanation as to the functions of certain affiliated parties or any payment to those parties, and incomplete invoicing and payment records for these transactions. Therefore, as stated in section VI above, the Department is resorting to facts available to value CIMC's ocean freight and brokerage and handling expenses.

We find that CIMC failed to cooperate by not acting to the best of its ability by not disclosing the affiliated parties related to its market economy ocean freight expenses, despite the Department's request for this information, which was not discovered until verification. For these reasons, as adverse facts available, we are not relying on CIMC's claimed market economy ocean freight expenses (denoted in the SAS field as INTNFRU) and brokerage and handling expenses (denoted in the SAS field as DMEBROKU).

However, we find this issue moot. As stated above, CIMC could not demonstrate that the price paid to the Chinese freight forwarder was set by the ME service provider, rather than by the Chinese freight forwarder or some other NME middleman between the Chinese freight forwarder and the ME ocean freight provider. Therefore, the Department does not find these to be market economy transactions. In conclusion, we are assigning surrogate values to CIMC's ocean freight and brokerage and handling expenses.

Comment 6: Alleged Unreported U.S. Brokerage and Handling Expenses

CIMC's Comments

- CIMC asserts that it reported all brokerage and handling expenses for the United States incurred during the POI for shipments of empty domestic dry containers in the DMEBROKU database field, and that for these same transactions CIMC reported "yes" in the DBROKU field to denote that it also incurred non-market economy domestic brokerage and handling expenses.[199]

[197] *See*, *e.g.*, Letter from the Department to CIMC, dated September 25, 2015 (Section A Supplemental Questionnaire Response), question 22 at page 5.
[198] *See* Letter from CIMC to the Department, dated October 30, 2014 (Second Supplemental Questionnaire Response) at pages 12-15.
[199] *Id*. at 5.

- CIMC argues that the Department examined information on the record at verification to show that all of the U.S. brokerage and handling charges were reported in the field DMEBROKU.[200]

- CIMC concludes by stating that "the Department in the final determination should not deduct in the calculation of CIMC's US net prices the additional proxy amount for US brokerage and handling expenses proposed by petitioner because such a deduction would result in a double-counting of the US brokerage and handling expenses that CIMC incurred during the POI and already reported in field "DMEBROKU" in the company's US sales database."[201]

Petitioner's Comments

- Petitioner notes that while CIMC stated that the three manufacturing companies did not incur any transportation expenses other than those reported in the fields USDUTYU and WTPBARFEE, CIMC did not state whether there were any expenses incurred by its previously undisclosed affiliated transportation companies.[202]

- Petitioner further notes that, for sales of empty containers, CIMC (or affiliated transportation service providers) was generally responsible for costs associated with importation, and that contracts with CIMC's customers specify CIMC's responsibility for certain transportation expenses.[203]

- Petitioner reasons that, because CIMC failed to disclose additional U.S. brokerage and handling expenses that it was obligated to pay, the Department must resort to facts available for these expenses and deduct $615 per container on sales of empty containers to most of its customers.[204]

Department's Position

We agree with Petitioner, in part, and are assigning a deduction of $390 per container on sales of empty containers to most of CIMC's customers.[205] In its initial response to section C of the Department's antidumping duty questionnaire, CIMC stated that it "incurred some market-economy brokerage and handling expenses during the POI and reported the per-unit expenses in field "DMEBROKU."[206] Additionally, with respect to U.S. Customs duties reported in the field "USDUTYU," CIMC stated that it "reported in this field the total harbor maintenance fees and merchandise processing fees incurred for each domestic container sold on a delivered basis to customers in the United States."[207] In response to a supplemental questionnaire, CIMC stated

[200] *Id*. at 5-6, with footnote 11 citing to CIMC's Verification Report, Verification Exhibit 10 at pages 63-64.
[201] *Id*. at 6.
[202] *Id*.
[203] *Id*. at 11.
[204] *Id*. at 12.
[205] For sales to one customer, who acts as the importer of record, we are not assigning this deduction. *See* Final Analysis Memorandum for the PRC-Wide Entity further discussion.
[206] *See* Letter from CIMC to the Department, dated September 10, 2014 (Section C response) at page C-19.
[207] *Id*. at C-24.

that, during the POI, Xinhui Special "incurred domestic brokerage and handling expenses for all sales of empty containers to the United States" and that Xinhui Special "incurred these expenses for some POI sales in US Dollars and paid for these expenses in US Dollars" to a market economy shipping agent.[208] CIMC also stated that "Xinhui Container, Qingdao CIMC, and Nantong CIMC did not incur any other U.S. transportation expenses."[209] Finally, CIMC provided copies of various contracts between CIMC and its customers which specify the terms of sale for domestic dry containers, including responsibility for payment of any U.S. brokerage and duty expenses for delivery of domestic dry containers.[210]

As noted in the previous paragraph, CIMC indicated that "Xinhui Container, Qingdao CIMC, and Nantong CIMC did not incur any other U.S. transportation expenses." However, as we noted in Comment 5 above, the Department discovered previously unreported affiliated parties involved in the procurement and provision of international freight services.[211] Thus, it is unclear whether any of these previously unreported affiliated parties incurred the U.S. duty and brokerage charges for which CIMC was obligated to pay according to the terms of the sales contracts. While some of the U.S. duty expenses were reported in the field USDUTYU, CIMC failed to establish that it reported all of the charges incurred.

CIMC claims that all of the international movement expenses incurred in the United States were reported in the field "DMEBROKU."[212] However, our examination of sales traces obtained at verification indicates that the charges and fees incurred in a market economy currency are either for ocean freight or expenses which are not associated with any of the charges for which CIMC is contractually obligated to pay, per the contracts with CIMC's customers.[213]

CIMC failed to disclose numerous affiliated parties related to the sale of domestic dry containers, despite the Department's request for this information.[214] Furthermore, we find that CIMC did not report certain international movement expenses related to U.S. duty, customs and brokerage charges for which it was contractually obligated to pay. Therefore, we are resorting to facts available, with an adverse inference.

---

[208] *See* Second Supplemental Response at 12.
[209] *See* Section C response at C-24.
[210] *See, e.g.*, Letter from CIMC to the Department, dated August 21, 2014 (Section A response) at page 2 of Exhibit A-13. *See also* Third Supplemental Response at 5 and Exhibit 1.
[211] *See* CIMC's Verification Report at 6, and Verification Exhibit 10 at page 64A, Verification Exhibit 13 at pages 31-32, Verification Exhibit 14 at pages 32-33, and Verification Exhibit 15 at pages 31-32.
[212] *See* CIMC's Rebuttal Brief at 5. In footnote 10 on the same page, CIMC further states that "CIMC notes that the field name "DMEBROKU" should have been listed as "USBROKU" in the reported US sales database to clearly identify that the expenses reported in this field are comprised of costs incurred for US brokerage and handling services. In any event, CIMC for all transactions involving the shipment of empty containers to the United States accounted for **both** domestic brokerage and handling expenses incurred in China **and** brokerage and handling expenses incurred in the United States in US sales database fields "DBROKU" and "DMEBROKU", respectively."
[213] *See* CIMC's Verification Report at Verification Exhibit 10 at page 64A, Verification Exhibit 13 at page 31, Verification Exhibit 14 at page 32, and Verification Exhibit 15 at page 31.
[214] *See, e.g.*, Letter from the Department to CIMC, dated September 25, 2015 (Section A Supplemental Questionnaire Response), question 22 at page 5.

We find that CIMC failed to cooperate by not acting to the best of its ability because CIMC failed to disclose numerous affiliated parties related to the sale of domestic dry containers, despite the Department's request for this information, and did not report certain international movement expenses related to U.S. duty, customs and brokerage charges for which it was contractually obligated to pay. As adverse facts available, we are assigning a cost of $390 to certain sales by CIMC. We derived this figure from ocean freight quotes from Maersk line, using a terminal handling service-destination charge of $390.[215]

Petitioner argued that the Department should also apply a cost of $225 per container based upon figures from *Doing Business Thailand 2014*, which lists additional costs for documentations preparation and customs clearance and technical control.[216] We are not applying these charges as they are related to expenses incurred at the port of exportation and are properly captured by the surrogate value for the field "DBROKU."

Comment 7: Capping of Ocean Freight Revenue by Ocean Freight Expense

Petitioner's Comments

- Petitioner claims that while CIMC did not provide information to the Department as requested regarding a break-out of revenues for ocean freight and insurance based on information in commercial invoices and U.S. Customs documentation, the Department did collect certain U.S. Customs documents for certain sales that delineated price components charged by CIMC to its customers.[217]

- Petitioner claims that the documentation shows that the declared prices for CIMC's ocean freight services were higher than the claimed market-economy expenses reported in the field INTNFRU.[218]

- Petitioner states that CIMC separately records revenues for the delivery services, and adjusts these if necessary based on certain delivery situations.[219]

- Petitioner avers that if the Department recalculates ocean freight and applies a surrogate value to all previously reported market economy prices then the issue of capping ocean freight revenue is moot.[220]

- However, Petitioner argues that should the Department accept and use the reported market economy expenses for ocean freight, the Department should then cap the associated freight revenue.[221]

[215] Petitioner's September 22nd Surrogate Value Submission at Exhibit 12.
[216] *See* Petitioner's Case Brief at 12.
[217] *See* Petitioner's Case Brief at 15-16.
[218] *Id*. at 16.
[219] *Id*. at 16-17.
[220] *Id*. at 17.
[221] *Id*.

CIMC's Comments

- CIMC states that it did not report freight revenue in its U.S. sales database and asserts that the Department did not adjust for international freight revenue in the margin calculation because CIMC demonstrated that it does not separately charge customers for international freight in the normal course of business.[222]

- CIMC states that the Department found at verification that CIMC issued *pro forma* export invoices for shipments of empty domestic dry containers and that the *pro forma* invoices were used solely for export and import declaration purposes, rather than to document or account for final sales.[223]

- Additionally, CIMC asserts that the *pro forma* invoices estimated international freight and insurance costs for U.S. Customs purposes, but that these do not represent actual movement expenses incurred or revenue collected from the customer.[224]

- Therefore, claims CIMC, since the figures relating to transportation on the *pro forma* invoices do not represent actual revenue collected, the Department should not make any adjustments.[225]

Department's Position

At verification, we found that CIMC issued *pro forma* invoices, or accounting vouchers, for a number of reasons, including the booking of sales revenue once a customer placed an order but prior to actual shipment of the merchandise.[226] CIMC can adjust the initial accounting vouchers with new vouchers, which are linked to the original accounting voucher.[227] During verification, we examined one sale of merchandise (listed as Verification Exhibit 10)[228] manufactured by Xinhui Special and found an adjustment to the original accounting voucher that adjusted the booked revenue for the sale due to a change in the condition in which the container was shipped to the United States.[229] The adjustment to expected revenue is reflected in the actual commercial invoice for the sale.[230] The total value of the commercial invoice is the same as the shipping invoice, and is the total amount paid by the customer.[231]
CIMC argues that the shipping invoice is a *pro forma* invoice that gives estimates for international freight and marine insurance costs, and do not reflect actual costs.[232] Petitioner argues that the shipping invoice provides the price for international freight and insurance and that

[222] *See* CIMC's Rebuttal Brief at 8.
[223] *Id*.
[224] *Id*. at 8-9.
[225] *Id*. at 9.
[226] *See*, *e.g.*, CIMC's Verification Report at 8.
[227] *Id*.
[228] *See* CIMC's Verification Report at 22.
[229] *Id*. at 23.
[230] *Id*.
[231] *Id*.
[232] *See* CIMC's Rebuttal Brief at 8-9.

"CIMC separately records the revenues for the container and its delivery services."[233] The original *pro forma* accounting voucher, on page 11 of Verification Exhibit 10, gives an estimated delivery cost per container.[234] An adjustment to the accounting voucher, on page 16 of Verification Exhibit 10, appears to be an increase in the delivery cost.[235] However, based on the allocation of the amounts from the accounting voucher adjustment which appear on page 17 of Verification Exhibit 10, the increase per container plus the estimated cost in the original accounting voucher does not equal the amount listed on the shipping invoice.[236] Furthermore, the extra cost is booked in the main business income sub-ledger and does not appear to be broken out by freight.[237] Thus, we conclude that the evidence on the record does not indicate that CIMC receives freight revenue that should be capped by market economy freight costs.

However, as explained above, we are denying CIMC's claimed market economy ocean freight charges and applying the surrogate value for ocean freight as well as brokerage and handling for all sales. Therefore, this issue is moot.

Comment 8: Surrogate Value for Corner Castings

CIMC's Comments

- CIMC argues that the Department must apply a "reasonable" surrogate value for CIMC's consumption of corner castings.[238]

- CIMC contends that the Department should value CIMC's consumption of corner castings with the surrogate value of imports into Thailand under HTS heading 7325.10, covering "other cast articles" of iron and steel and of nonmalleable cast iron, which CIMC believes is an accurate representation of the corner castings that it consumes.[239]

- CIMC states that the Department's use of the HTS heading 7326.909909 in the preliminary determination, covering "other articles of iron and steel," is inaccurate as this HTS heading does "not appear to include castings like the corner castings used in the production of domestic containers."[240]

- CIMC asserts that neither the Department nor Petitioner has provided evidence to indicate that the use of HTS heading 7325.10 is inappropriate, or that the use of 7326.909909 produces a more accurate antidumping duty margin.[241]

[233] *See* Petitioner's Case Brief at 16-17.
[234] *See* CIMC's Verification Report at 23.
[235] *Id*.
[236] *Id*.
[237] *Id*., referencing page 19 of Verification Exhibit 10.
[238] *See* CIMC's Case Brief at 31.
[239] *Id*.
[240] *Id*.
[241] *Id*.

- CIMC states that its consumption of these corner castings is "miniscule" by weight in comparison to a single domestic dry container, but that the use of the different HTS headings results in a difference in the antidumping duty margin of almost 25 percentage points, and that such a difference for a small input cannot be accurate.[242]

Petitioner's Comments

- Petitioner states that the Department should continue to value CIMC's corner castings using Thai imports under HTS heading 7326.90.99-090.[243]

- Petitioner asserts that, in previous surrogate value submissions, CIMC agreed that imports into Thailand of articles under HTS heading 7326.90 was the correct category for this factor of production.[244]

- Petitioner notes that CIMC's request to use Thai imports under HTS heading 7325.10 includes articles of non-malleable cast iron, and that CBP has ruled that steel corner castings imported into the United States should enter under HTS heading 7326.90.9090.[245]

- Petitioner argues that, contrary to CIMC's assertion, both Petitioner and CIMC provided evidence that the HTS 7326.90.99-090 heading was correct because the corner castings in question are produced to standards which indicate that corner castings are properly classified as articles of steel.[246]

- In addition, Petitioner states that "CIMC's corner castings are highly specialized steel components which provide the essential function of allowing the domestic containers to be stacked on top of one another. Thus, contrary to CIMC's arguments, one would expect a high value-to-weight ratio for such specialized steel components."[247]

Department's Position

In the *Preliminary Determination*, we valued CIMC's corner castings FOP using Thailand HTS number 7326.90.9090. After reviewing record evidence, we agree with Petitioner and continue to value CIMC's corner castings FOP using Thailand HTS 7326.90.9090.

CIMC argues that the Department should value its corner casting using a surrogate value based on HTS heading 7325.10. HTS heading 7325 is for "other cast articles of iron or steel" and HTS heading 7325.10 is "of non-malleable cast iron."[248] The Department does not believe that the HTS heading 7325, suggested by CIMC, is appropriate as evidence on the record indicates that

[242] *Id*. at 32.
[243] *See* Petitioner's Rebuttal Brief at 6.
[244] *Id*.
[245] *Id*. at 7.
[246] *Id*.
[247] *Id*. at 8.
[248] *See* http://hts.usitc.gov/.

CIMC's corner castings are not "of non-malleable cast iron" but instead are cast steel products, as discussed below.

In response to one of the Department's supplemental questionnaires, CIMC stated that "corner castings (i.e., factors-of-production field "CORNERCAST") . . . are cast (not forged) from carbon steel."[249] CIMC further provides contracts between CIMC and its customers which specify that the corner castings must be manufactured to a steel standard.[250] Additionally, Petitioner supplied information on the record indicating that CIMC's supplier of corner castings lists the corner castings as manufactured to a same steel standard, JIS SCW480.[251] Finally, Petitioner provided a ruling from CBP regarding "corner castings" which "are welded into intermodal containers."[252] In the ruling, CBP stated that the "applicable subheading for the corner castings will be 7326.90.9090, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of iron or steel, other."[253]

CIMC states that the weight of the corner castings relative to the total weight of a container is very small, and the effect on the antidumping duty margin when using HTS heading 7326.90.9090 instead of HTS heading 7325.10 is approximately 25 percentage points.[254] CIMC then argues that "a surrogate value for corner castings that represent only a miniscule share of the total empty weight of CIMC's domestic containers, and that adds close to twenty-five absolute percentage points to CIMC's overall AD margin, cannot serve as a reasonable basis for valuing this minor material input."[255] However, we note that corner castings are a critical component of domestic dry containers, and agree with Petitioner's statement that the corner castings are "highly specialized steel components which provide the essential function of allowing the domestic containers to be stacked on top of one another" and that "one would expect a high value-to-weight ratio for such specialized steel components."[256] Therefore, based on the evidence on the record, we continue to determine that the appropriate surrogate value for CIMC's corner castings should be based on imports into Thailand of articles under HTS 7326.90.9090.

Comment 9: Incorrect Calculation of CIMC's "Wood Flooring_Other" Surrogate Value

CIMC's Comments

- CIMC states that the Department "failed to follow its well-established practice of weight-averaging the surrogate value for wood flooring with the market-economy wood flooring prices that CIMC paid in US Dollars to suppliers in the United States during the POI."[257]

[249] *See* Third Supplemental Response at 5-6.
[250] *Id*. at 6, and Exhibit 1.
[251] *See* Petitioner Pre-Preliminary Comments at 14-15 and Exhibit 5.
[252] *Id*. at Exhibit 6.
[253] *Id*.
[254] *See* CIMC's Case Brief at 32.
[255] *Id*.
[256] *See* Petitioner's Rebuttal Brief at 32.
[257] *See* CIMC's Case Brief at 28.

- CIMC argues that the Department should weight-average the surrogate value for wood flooring with the market-economy prices that CIMC paid for wood flooring purchased from market-economy suppliers in the United States.[258]

Petitioner's Comments

- Petitioner did not comment on this issue.

Department's Position

We agree with respondent and have weight-averaged the surrogate value for wood flooring with CIMC's market-economy wood flooring purchases during the POI. *See* Final Analysis Memorandum for the PRC-Wide Entity for further information.

Comment 10: Separate Rate Determination

CIMC's Comments

- CIMC argues that the record evidence supports its request that CIMC be granted a separate rate, and that recent decisions by the Department support CIMC's position.[259]

- CIMC claims that the Department erred in its *Preliminary Determination* by denying CIMC a separate rate because the Department did not analyze the fact pattern correctly.[260]

- CIMC argues that there cannot be *de facto* control of CIMC by the PRC government for numerous reasons, including:

    1. Articles of Association indicating that the non-executive board members appointed by COSCO and China Merchants Group do not exercise day-to-day control of CIMC; and[261]
    2. The Department found at verification that the non-executive board of directors is not involved in CIMC's export activities for domestic dry containers.[262]

- In addition, while acknowledging that the Department's process for determining whether a company is entitled to a separate rate, CIMC nevertheless argues that the Department's decision in the preliminary determination with respect to whether or not the Government of the PRC exercised *de facto* control over the company was flawed and based on four factual errors.[263]

[258] *Id*. at 28 and 30-31.
[259] *Id*.
[260] *See* CIMC's Case Brief at 3.
[261] *Id*. at 17-20.
[262] *Id*. at 21-22.
[263] *Id*.

- First, according to CIMC, there was never a time during the POI when COSCO and China Merchants Group held a majority of seats on CIMC's board of directors.[264]

- To the contrary, according the CIMC, the composition of the board during the POI shows an absence of government control because neither COSCO nor China Merchants Group, singly or collectively, held a majority share of board seats during the POI.[265] CIMC restates that the board only had one executive director who was involved in day-to-day operations, in this instance the President, and that he was not appointed by either COSCO or China Merchants Group.[266]

- Second, according to CIMC, board member Mr. He Jiali is not the chief financial officer for CIMC.[267] Rather, CIMC stated that "CIMC's 2013 annual report states on Page 112 that Mr. He Jiale, who served as the chairman of CIMC's supervisory committee, serves as the chief financial officer of COSCO (Hong Kong) Group Co., Ltd., not as the chief financial officer of CIMC Group."[268]

- CIMC further states that "{t}his error was a critical basis for the Department's erroneous finding, discussed below, that COSCO or China Merchants Group appointees on CIMC Group's board of directors were involved in day-to-day company operations during the POI."[269]

- Third, CIMC argues that the board members appointed by COSCO and China Merchants Group are not involved in the day-to-day operations of the company.[270]

- CIMC claims that the "formal structure of CIMC's board of directors precludes COSCO and China Merchants from having enough seats on CIMC Group's board to have control of CIMC Group's board or CIMC's day-to-day activities" and that the "Department's broad assertion that 'record evidence shows that members of boards of directors of both COSCO and China Merchants participate in the day-to-day operations of CIMC' is, in fact, not supported by any record evidence, including information contained in CIMC Group's annual report, the company's articles of association, and the Department's own findings during the on-site verification at CIMC."[271]

- Fourth, CIMC asserts that neither COSCO nor China Merchants Group are controlling shareholders of CIMC.[272]

[264] *Id*. at 4-6.
[265] *Id*.
[266] *Id*.
[267] *Id*. at 6.
[268] *Id*.
[269] *Id*. at 7.
[270] *Id*.
[271] *Id*. at 8.
[272] *Id*. at 9.

- Additionally, CIMC asserts that the Department's preliminary determination that State-owned Assets Supervision and Administration Commission's (SASAC's) ownership of CIMC through COSCO and China Merchants Group constituted coordinated SASAC control of CIMC was a speculative reading of CIMC's articles of association, which is both factually incorrect and is contradicted by CIMC's 2013 annual report statement that there is no controlling shareholder.[273]

- With respect to the ownership percentages, CIMC claims that China Merchants Group owns only 25.54 percent of CIMC's shares and that SASAC thus owns only 14.07 percent of CIMC through China Merchants Group.[274] Additionally, CIMC states that SASAC owns 22.75 percent of CIMC through COSCO.[275] Thus, according to CIMC, neither COSCO nor China Merchants Group owns a controlling share of CIMC and that there is no majority government ownership of CIMC.[276]

- CIMC avers that it would be inappropriate to combine SASAC's ownership through COSCO and China Merchants Group because "there is no evidence that these shareholders operate as one unit under SASAC's direction" and that the Department did not cite to any instances of coordination between COSCO and China Merchants Group.[277]

- CIMC states that the Department's *Preliminary Determination* that there is no *de jure* control of CIMC by the PRC government is the correct determination, as there is no evidence of government restriction of exports and that government ownership (majority or minority) of a company does not indicate *de jure* control.[278]

- CIMC asserts that the Department's preliminary determination with respect to separate rates is not consistent with the Department's evolving practice in light of the decision in *Advanced Technology I*[279] and cites a number of recent determinations by the Department that indicate a need for majority ownership by SASAC in a company or a parent company or where the board of directors was government controlled, in contrast to CIMC's fact pattern.[280]

Petitioner's Comments

- Petitioner states that the Department's *Preliminary Determination* to deny CIMC a separate rate was correct.[281]

---

[273] *Id*. at 10.
[274] *Id*. at 11.
[275] *Id*.
[276] *Id*. at 11-12.
[277] *Id*. at 13.
[278] *Id*. at 13-16.
[279] *Advanced Technology & Materials Co., Ltd.et al. v. United States*, 855 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*).
[280] *Id*. at 22-27.
[281] *See* Petitioner's Rebuttal Brief at 16.

- Petitioner asserts that the Department's preliminary findings of COSCO and China Merchants Group to be controlling shareholders is correct, and that the ability to appoint half of the board of directors or to control 30 percent of the voting rights "are equivalent to majority ownership."[282]

- Petitioner states, arguendo, that if the Department reverses its *Preliminary Determination* with respect to CIMC's separate rate status, that the PRC-wide entity rate should be the highest of the calculated rates for the mandatory respondents.[283]

Department's Position

We continue to find that CIMC is not entitled to a separate rate as it failed to demonstrate an absence of *de facto* government control. In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[284] The Department's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[285] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

In its response to Section A of the Department's antidumping duty questionnaire, CIMC provided its Articles of Association (AoA)[286] and its 2013 annual report.[287] Additionally, at verification, the Department collected minutes of the meetings of CIMC's board of directors during the POI.[288] The AoA generally governs the company's operations.

The AoA specifies, among other things, the following:

- Article 62 defines a "controlling shareholder" as someone who

  (1) a person who, acting alone or in concert with others, has the power to elect more than half members of the Board of Directors;
  (2) a person who, acting alone or in concert with others, has the power to exercise 30% or more of the voting right of the Company or control the exercise of 30% or more of the voting right of the Company;
  (3) a person who, acting alone or in concert with others, holds 30% or more of the outstanding shares of the Company;

[282] *Id*.
[283] *Id* at 16-17.
[284] *See, e.g.*, *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, 55040 (September 24, 2008).
[285] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991).
[286] *See* Letter from CIMC to the Department, dated August 21, 2014 (Section A response) at Exhibit 6.
[287] *Id*. at Exhibit 7.
[288] *See* CIMC's Verification Report at Exhibit 20.

(4) a person who, acting alone or in concert with others, has de facto control of the Company by any other means.[289]

- Article 63 states that the shareholders meeting will "elect and replace Directors and Supervisors assumed by non-employee representatives;[290]

- Article 67, which indicates that the board of directors sets the rules for the shareholders meeting.[291]

- Article 78, which allows "independent directors, the Supervisory Committee, shareholders severally or jointly holding 10% or more of the shares of the Company" to convene a meeting of the shareholders.[292]

- Article 162, which states that the board of directors "shall consist of eight (8) members, including one Chairman, one Vice Chairman and three (3) independent directors."[293]

- Article 163 describes the powers and responsibilities of the board of directors, with point 10 stating that the board of directors has the power "to appoint or dismiss the Company's President and the secretary of the Board; and pursuant to the president's nominations, to appoint or dismiss senior officers including vice presidents and chief financial officer of the Company and to decide on their remuneration, rewards and penalties;"[294]

- Article 185 states that CIMC will have three "independent directors" and defines these directors as "directors who assume no other office except as a director in the Company, and have no relationship with the Company and substantial shareholders which may hinder his/her independent and objective judgment."[295]

- Article 190, which gives the board of directors, the supervisory committee, and certain shareholders the right to nominate independent directors to be elected at a shareholders meeting.[296]

- Article 224, indicating that the board of directors appoints the President of CIMC, as well as six vice-presidents.[297]

- Article 248, which specifies who elects the three members of the supervisory committee.[298]

---

[289] *See* Section A response, Exhibit 6 at pages 99-100 (document pages 25-26)
[290] *Id*. at page 100 (document page 26)
[291] *Id*. at page 102 (document page 28).
[292] *Id*. at page 105 (document page 31).
[293] *Id*. at page 128 (document page 54).
[294] *Id*. at page 129 (document page 55).
[295] *Id*. at page 134 (document page 60).
[296] *Id*. at page 135 (document page 61).
[297] *Id*. at page 145 (document page 71).
[298] *Id*. at page 149 (document pages 75).

- Article 249, outlining the functions and responsibilities of the supervisory committee.[299]

In the 2013 annual report, CIMC provides (among others) the following information:

- A list of the top ten shareholders of the company.[300]

- A list of other shareholders holding above ten percent of shares in the company. The two companies listed are COSCO and China Merchants.[301]

- A list of substantial shareholders under the Securities and Futures ordinance of Hong Kong. The report lists the shareholders and the percentage of total share capital. The report lists the shareholders and percentage of total shares owned as: China Merchants Group, with 25.54 percent, COSCO with 22.75 percent, Hony Capital Management Limited, with 5.16 percent, and Templeton Asset Management (Singapore) Ltd. with 4.31 percent.[302]

- A list of substantial shareholders, different than under the Securities and Futures ordinance of Hong Kong. The list includes China Merchants and COSCO, and contains a flowchart showing the equity structure for these two shareholders in CIMC.[303]

- A list of CIMC's board of directors, including biographies of each member.[304]

- A list of the members of the supervisory committee, including biographies.[305]

- A list of the senior management of CIMC, including biographies.[306]

Record evidence indicates that both China Merchants Group and COSCO are 100 percent owned by the State-owned Assets Supervision and Administration Commission (SASAC).[307] CIMC's own annual report lists the total ownership percentage of capital shares in CIMC by China Merchants Group and COSCO to be 48.26 percent.[308] CIMC states that the two "substantial shareholders" that own over 10 percent of the capital shares are China Merchants Group and COSCO.[309] SASAC, through its ownership of China Merchants Groups and COSCO, qualifies as a "controlling shareholder" under Article 62 of the AoA.[310] Additionally, as set forth below, SASAC (through China Merchants Group and COSCO) exercises control over important management organizations for CIMC, including the board of directors and the supervisory

[299] *Id*.
[300] *See* CIMC's Section A response, Exhibit 7 at page 917 (document page 97).
[301] *Id*. at page 919 (document page 99).
[302] *Id*. at page 920 (document page 100).
[303] *Id*. at 921 (document page 101).
[304] *Id*. at 924-926 (document pages 104-106).
[305] *Id*. at 927 (document page 107).
[306] *Id*. at 928-930 (document pages 108-110)
[307] *Id*. at 921 (document page 101).
[308] *Id*., and at 920 (document page 100).
[309] *Id*. at 921 (document page 101).
[310] *See* CIMC's Section A response, Exhibit 6 at pages 99-100 (document pages 25-26).

committee. These organizations, as detailed below, exercise control over senior management and the operations of CIMC.

Both the composition of the board of directors, as well as the manner in which it is selected and the duties of the board, indicate SASAC control. At the time of the publication of the 2013 annual report, which CIMC submitted on the record of this investigation, there were seven[311] members of the board.[312] Of the seven board members, one was the President, three were "non-independent" members, and three were "independent" members of the board.[313] The board of directors appoints the President of CIMC.[314] In 2013, of the six members of the board of directors of CIMC that are not the President, the three "non-independent" members also belong to the boards or senior management of China Merchants Group and/or COSCO.[315] Of the three "independent" board members, two are retired from careers in both COSCO and China Merchants Group and affiliates.[316] During the time when CIMC's board of directors had eight members, four of these were non-independent directors that belonged to the boards or senior management of China Merchants Group and/or COSCO.[317] The board of directors carries out numerous duties, including operations which we determine exercise day-to-day influence/control of CIMC. For example, minutes of a board meeting indicate that the board has oversight over items such as the director's service contract, supervisor's service contract, and senior manager's service contract.[318] The board of directors for CIMC also appoints the President and Vice-Presidents, per Article 224 of the AoA, thus controlling senior management.[319]

The supervisory committee consists of three members, two of which are elected by the shareholders and one of which is elected by the workers of the company.[320] The supervisory committee, among other duties, overseas the board of directors and senior management, has the power to remove members of the board and senior management for malfeasance, and oversees the financial health of CIMC.[321] The chairman of the supervisory committee is Mr. He Jiale, who is also a director and chief financial officer of COSCO (Hong Kong) Group Limited.[322] The

[311] CIMC's board of directors normally has eight members. *See* CIMC's Section A response, Exhibit 6 at pages 99-128 (document page 54).
[312] *See* Section A response, Exhibit 7 at pages 924-926 (document pages 104 – 106).
[313] *Id*. at 924 (document page 104).
[314] *See* CIMC's Section A response, Exhibit 6 at page 129 (document page 55).
[315] *See* CIMC's Section A response, Exhibit 7 at pages 924-926 (document pages 104-106). The three "non-independent" board members are: 1) Mr. Li Jianhong, Chairman of the Board for CIMC and the director and president of China Merchants Group; 2) Mr. Wang Hong, a director of China Merchants Property Development Co., Ltd., a director of China Merchants Energy Shipping Co., Ltd., and the general manager of planning department of China Merchants Group, and; 3) Mr. Wu Shuxiong, the vice president of COSCO (Hong Kong) Group Limited, and a non-executive director of COSCO International Holdings Limited.
[316] *See* CIMC's Section A response, Exhibit 7 at pages 924 – 926 (document pages 104 – 106). Mr. Li Kejun was an executive director and the vice president of China Merchants Group Limited. Mr. Pan Chengwei held various senior management positions in various COSCO affiliates, and is currently an independent non-executive director on the board of China Merchants Bank Co., Ltd. China Merchants Bank is listed as the fifth-largest shareholder in CIMC. *See* CIMC's Section A response, Exhibit 7 at page 917 (document page 97).
[317] *See* CIMC's Verification Report at Exhibit 20.
[318] *See* CIMC's Verification Report at Exhibit 20, page 27.
[319] *See* CIMC's Section A response, Exhibit 6 at page 145 (document page 71).
[320] *See* CIMC's Section A response, Exhibit 6 at page 149 (document page 75), Article 248.
[321] *Id*. at pages 149-150 (document pages 75-76), Article 249.
[322] *See* CIMC's Section A response, Exhibit 7 at page 927 (document page 107).

other member of the supervisory committee elected by the shareholders is Ms. Wong Sin Yue, Cynthia, who also works China Merchants Holdings (International) Co., Ltd. as vice-general manager of that company responsible for financial affairs.[323] Additionally, the supervisory committee, as noted above, performs numerous critical oversight functions of both the board of directors and senior management.

In summary, both the board of directors and the supervisory committee are dominated by current and former members of COSCO, China Merchants Group, and affiliates. Both COSCO and China Merchants Group, as previously noted, are 100 percent owned by SASAC and exercise ownership/control of 48.26 percent of the capital shares of CIMC. Also, as noted above, SASAC, under Article 62, qualifies as a "controlling shareholder" of CIMC.

Against this evidence, CIMC argues a number of issues which, according to CIMC, demonstrates an absence of *de facto* government control. For example, CIMC argues that COSCO and China Merchants Group, singly or collectively, did not hold a majority share of board seats during the POI.[324] CIMC further states that the Department's *Preliminary Determination* rests on an incorrect assertion that a majority of the board of directors was controlled by COSCO and China Merchants Group.[325] As we have noted above, while the board of directors does not contain a majority of members which are currently active in COSCO and China Merchants Group, the board does contain a majority of current and former employees of these companies and has the power to appoint the President and the Vice-Presidents which operate the company. Therefore, we find that SASAC, though COSCO and China Merchants Group, exercises significant influence and control on CIMC's board of directors. Furthermore, as we noted, the supervisory committee (which has numerous oversight powers on senior management and the board of directors) has a majority of members who are employees of COSCO and China Merchants Group, and affiliates. Thus, we find that SASAC, through COSCO and China Merchants Group, exercise control over CIMC.

CIMC also argues that the Department erred in its description of Mr. He Jiale as "the Chairman of the Supervisory Committee and Chief Financial Officer is . . . listed as a member on the board of COSCO" and that Mr. He Jiale is in fact the Chief Financial Officer of COSCO.[326] CIMC concludes that "{t}his error was a critical basis for the Department's erroneous finding, discussed below, that COSCO or China Merchants Group appointees on CIMC Group's board of directors were involved in day-to-day company operations during the POI."[327] We agree with CIMC that the Department erroneously listed Mr. He Jiale as the Chief Financial Officer of CIMC, when he is in fact the Chief Financial Officer of COSCO. However, we believe that Mr. He Jiale's positions as both the Chief Financial Officer of COSCO and chairman of the supervisory committee demonstrates, *via* the oversight functions of the supervisory committee, that executives of COSCO and China Merchants Group exercise day-to-day control over CIMC's activities, companies that are 100 percent SASAC-owned.

---

[323] *Id*. China Merchants Holdings (International) Co., Ltd. is a subsidiary of China Merchants Group and owns shares in CIMC. *See* Section A response, Exhibit 7 at page 921 (document page 101).
[324] *See* CIMC's Case Brief at 4-6.
[325] *Id*.
[326] *Id*. at 6-7.
[327] *Id*.

CIMC argues that COSCO and China Merchants Group together are not controlling shareholders.[328] CIMC points to its 2013 annual report at page 98, which states that there is "no controlling shareholder" in the company.[329] However, the plain language of Article 62 of the AoA indicates that SASAC's ownership level of CIMC's capital shares, through COSCO and China Merchants Group, qualifies it as a "controlling shareholder." CIMC also argues that "{c}alculating SASAC's ownership in CIMC Group by combining SASAC's indirect ownership in two separate legal entities, COSCO and China Merchants Group, is all the more unwarranted because there is no evidence that these shareholders operate as one unit under SASAC's direction."[330] We note that, in finding that a company qualifies for a separate rate that there is a rebuttable assumption of government control. Additionally, the composition of the board of directors and the unanimous voting records in the board minutes[331] show that the members on the board of directors for CIMC that also are members of COSCO and China Merchants Group demonstrate a unified approach to governance of CIMC.

CIMC argues that the Department overstated China Merchant Groups percentage ownership in CIMC, and that the actual ownership percentage is not 25.54 percent but instead 14.07 percent.[332] As we noted, CIMC's annual report shows that China Merchants Group owns 25.54 percent of CIMC. However, even with the reduced ownership percentage claimed by CIMC, SASAC total ownership through both COSCO and China Merchants Group still exceeds 30 percent and SASAC is still a "controlling shareholder" under Article 62 of the AoA.

CIMC asserts that the members of the board of directors affiliated with COSCO and China Merchants Group are "all non-executive board members who are not involved CIMC's operations" and that such members cannot hold management positions in CIMC.[333] As we have noted, however, the board of directors appoints the President and Vice-Presidents. CIMC itself also states that the board of directors appoints senior management.[334]

CIMC states that the Department examined the corporate structure of the company during verification and found that certain vice-presidents run the container business unit and that the board of directors does not engage in day-to-day operations of the container unit which produces domestic dry containers.[335] We note that of the vice-presidents appointed by the board, and listed in CIMC's 2013 annual report, Mr. Zhang Baoqing is listed as the general manager of Xinhui Special and of CIMC's container group.[336] We find that this appointment affords the board of directors significant control over the operations of the container business.

[328] *Id*. at 9-13.
[329] *Id*.
[330] *Id*. at 13.
[331] *See* CIMC's Verification Report at Exhibit 20.
[332] *See* CIMC's Case Brief at 11.
[333] *Id*. at 17-18.
[334] *Id*. at 18.
[335] *Id*. at 21-22.
[336] *See* CIMC's Section A response, Exhibit 7 at page 929 (document page 109).

CIMC acknowledges that the Department's separate rate analysis is evolving.[337] Nevertheless, CIMC argues that the *Preliminary Determination* with respect to CIMC's separate rate request is not consistent with a number of recent decisions by the Department.[338] In all of the decisions cited, CIMC claims that the Department found that the companies which were denied a separate rate were majority owned by SASAC.[339] However, as CIMC itself notes, in *Tetrafluoroethane from the PRC*, "the Department denied a respondent a separate rate after determining that all three of the respondent's shareholders were controlled by another company that, ultimately, was 100 percent owned by SASAC."[340] The fact pattern in this investigation is substantially similar. That is, SASAC owns 100 percent of both COSCO and China Merchants Group, which we determine are "controlling shareholders" according to Article 62 of the AoA, as well as COSCO's and China Merchant Group's involvement in the board of directors and the supervisory committee to evidence this control of CIMC.

CIMC also attempts to contrast the facts of this investigation with *Tetrafluoroethane from the PRC*, arguing that in *Tetrafluoroethane from the PRC* the Department "found that all seven of the respondent's board members were appointed by the respondent's three shareholders, all of which were controlled by a 100 percent SASAC-owned company and, accordingly, concluded that the respondent was *de facto* government controlled because of SASAC's resulting influence over the respondent's board of directors in its entirety."[341] CIMC contrasts this to the current fact pattern, which it claims demonstrates that "COSCO and China Merchants Group each can appoint only a maximum of two members to CIMC's eight-member board of directors, with five total votes required to pass board resolutions, including resolutions pertaining to the appointment of senior company managers" and "at no point during the POI did COSCO or China Merchants Group hold a majority of seats on CIMC Group's board of directors."[342] However, as explained above, the board of directors appoints the President, who is also on the board, and has the power to nominate independent directors for election to the board. The 2013 annual report indicates that two of the three independent directors are former long-term employees of COSCO or China Merchants Group. The composition of the board of directors, and the manner of their elevation to the board, thus indicates a controlling influence of COSCO and China Merchants Group beyond the three or four non-independent board members that were present during the POI.

---

[337] *See* CIMC's Case Brief at 22. CIMC cites to the Preliminary Decision Memorandum, which states at 13: "{t}he Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC antidumping duty proceeding, and Commerce's determinations therein."
[338] *Id*. at 22-24.
[339] *Id*. CIMC cites to decisions in *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co., Ltd.et al. v. United States*, 855 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*); *remand aff'd Advanced Technology & Materials Co., Ltd. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd without opinion* 541 F. App'x 1009 (Fed. Cir. 2014); *Tetrafluoroethane from the PRC*; *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 Fed. Reg. 53169 (September 8, 2014), Preliminary Decision Memorandum, pages 5-9; and *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, Consol. Ct. No. 13-00012, Slip Op. 14-134 (November 20, 2014) Draft Results of Redetermination Pursuant to Court Order, filed Feb. 25, 2015, p. 7-13.
[340] *Id*. at 23-24.
[341] *Id*. at 25.
[342] *Id*. at 25-26.

Finally, CIMC cites to two cases where it asserts the fact pattern is similar to the fact pattern of this investigation and where the Department granted a separate rate.[343] With respect to *Welded Steel Line Pipe*, we note that the case in question occurred prior to the decision by the Court of International Trade in *Advanced Technology I* and our remand determination therein. [344] Nevertheless, we find that the fact pattern in this investigation distinguishes it from the cases cited by CIMC because the fact pattern in the current investigation (as previously discussed) indicates SASAC ownership and control through its 100 percent owned companies (COSCO and China Merchants Group), and their involvement in the management of the company.

With respect to CIMC's arguments that the Department did not find *de jure* control by the Government of the PRC, we remind CIMC that according to the Department's separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities." As we find that *de facto* government control exists over CIMC's export activities, an analysis of *de jure* government control is moot.

For the reasons set forth above, we continue find that CIMC is *de facto* controlled by the Government of the PRC and thus is not entitled to a separate rate.

C. Singamas-Specific Issues

Comment 11: Surrogate Value for Hinges

Singamas' Comments

- Singamas argues that in the *Preliminary Determination*, the Department relied on a surrogate value for "hinges" (FOP 2.23) that was "derived from an HTS code {number} that clearly describes a very different kind of product than what Singamas uses for its subject containers."[345]

- Singamas contends that the surrogate value relied on in the *Preliminary Determination* was "based on HTS {heading} 8302, which covers 'base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddler, trunks, chests, caskets or the like ..."[346]

[343] *Id*. at 26-27. CIMC cites to *Final Determination in the Antidumping Duty Investigation of Certain Circular Welded Steel Line Pipe from the People's Republic of China*, 74 FR. 14514 (March 31, 2009 (*Welded Steel Line Pipe*), and accompanying Issues and Decision Memorandum at Comment 11, and; *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, Consol. Ct. No. 13-00012, Slip Op. 14-134 (Nov. 20, 2014).
[344] *See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), *remand aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd without opinion* 541 F. App'x 1009 (Fed. Cir. 2014) (*Advanced Technology II*). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf.
[345] *See* Singamas' Case Brief at 9-10.
[346] *Id*. at 9.

- Singamas argues that while this HTS code relied on by the Department in the *Preliminary Results* does include a subcategory for "hinges," it "suggests that the kind of hinges imported under this HTS number are used for much different purposes than those used for an industrial product like containers."[347]

- Rather, Singamas argues, the shape and size of the hinges used on Singamas' containers are in no way the type of hinges used on furniture or other wood products such as those described in the HTS number used by the Department.[348]

- Singamas states that while its proposed HTS number (*i.e.*, HTS number 7326.909.9090) does not specifically use the term "hinge," it is more appropriate category than the one used by the Department for the *Preliminary Determination*.[349]

- Singamas also notes that HTS number 7326.909.9090 is "the same as that used for Hinge Butt, and is similar to that used for Hinge Pin (HTS {number} 7318.240.000)" and that "given the similarity in use for all three of these inputs, it is unreasonable for the Department to rely on such different sources of surrogate value data for hinges."[350]

- For the final determination, Singamas, argues, the Department should "ensure that the source of surrogate value data is similar for similar inputs, and should use HTS {number} 7326.909.9090 as the source of surrogate value information for Singamas' consumption of hinges."[351]

Petitioner's Comments

- Petitioner contends that Singamas' proposal of Thai HTS number 7326.90.99-090, which includes other articles of iron and steel, to value this FOP, is incorrect.[352]

- Petitioner provides a table which summarizes the material codes that Singamas collapsed into the reported hinge FOP.[353] Based on this summary, Petitioner argues that the material the hinge is produced from does not fall within "other articles of iron and steel," but rather under HTS number 8302.10.00-000 which covers hinges made of base metal.[354]

- Petitioner argues that Singamas' "sole" argument in its case brief is that Thai HTS heading 8302 "encompasses hinges used for a different purpose than the hinges on the subject merchandise."[355] However, according to Petitioner, Thai HTS heading 8302

[347] *Id*.
[348] *Id*.
[349] *Id*. at 10.
[350] *Id*.
[351] *Id*.
[352] *See* Petitioner's Rebuttal Brief at 8.
[353] *Id*. at 9.
[354] *Id*.
[355] *Id*. at 9.

"includes hinges used on doors whether they are a door for a house or a door for an industrial domestic container."[356]

- According to Petitioner, for the above-mentioned reasons the Department should continue to value Singamas' hinges with Thai HTS number 8302.10.00-000.[357]

Department's Position

In the *Preliminary Determination*, we valued Singamas' hinges FOP using Thai HTS number 8302.10.00-000 ("Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hatracks, hatpegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; Hinges"). For this final determination, we agree with Petitioner and continue to find that Thai GTA import data under HTS number 8302.10.00-000 represents the best available information to value Singamas' hinges.

Singamas argues that the shape and size of the hinges used on its domestic dry containers are not the same type of hinges used on furniture or other wood products such as those described in the HTS number used by the Department. Regardless of the fact that the HTS number proposed by Singamas does not include a subcategory for "hinges," record evidence demonstrates that the material the hinge is produced from does not fall within "other articles of iron and steel," as described under HTS number 7326.909.9090. In its October 27, 2014, response to the Department's supplemental questionnaire (October 27th SQR), Singamas summarized the material codes that it collapsed into the reported "hinge" FOP.[358] While Thai HTS number 7326.909.9090 covers "other articles of iron or steel,"[359] as can be seen from Singamas' summarization of the material codes that it collapsed into the reported "hinge" FOP, the material the hinge is produced from does not fall within "other articles of iron and steel."

With regard to Singamas' argument that Thai HTS number 7326.909.9090 is "the same as that used for Hinge Butt, and is similar to that used for Hinge Pin (HTS {number} 7318.240.000)" and that "given the similarity in use for all three of these inputs, it is unreasonable for the Department to rely on such different sources of surrogate value data for hinges," we note that Singamas' argument is misplaced. While we valued CIMC's hinge butt and hinge pins using Thai HTS numbers 7326.909.9090 and 7318.240.000, respectively, we valued Singamas' hinge under Thai HTS number 8302.10.00-000 based on Singamas' own reporting of this FOP to the Department – specifically based on (1) the fact that Singamas reported a complete hinge as an FOP and (2) Singamas' own summarization of the material codes that it collapsed into the reported hinge FOP. As explained above, the material the hinge is produced from (base metal) does not fall within "other articles of iron and steel" (*i.e.*, Thai HTS number 7326.909.9090).

Therefore, for this final determination, we will continue to value Singamas' hinges using Thai GTA import data under HTS number 8302.10.00-000.

[356] *Id*. at 9.
[357] *Id*. at 10.
[358] *See* Singamas' October 27th SQR at Exhibits D-22 (QPCL) and Exhibit D-23 (HPCL).
[359] *See* Petitioner's September 22nd Surrogate Value Submission at Exhibit 3.

Comment 12: Steel Coil Factor-of-Production (FOP) Should Be Increased to Account for Yield Loss

Petitioner's Comments

- Petitioner contends that the production process description supplied by Singamas shows that QPCL and HPCL "generated steel scrap in their {the} second stage of their production processes where they cut and shaped the purchased steel coils into the semi-finished sheets subsequently used in the production of the merchandise under consideration."[360]

- Petitioner also contends that Singamas "claimed a by{-}product offset for the steel scrap based on its sales of steel scrap."[361]

- Petitioner states that despite these facts and its claim to a by-product offset for steel scrap, Singamas incorrectly accounted for yield loss into its calculation of the FOPs for the purchased steel coils.[362]

- Petitioner also states that at verification, Singamas could not provide an explanation of its reporting other than to note that the company's records maintained in the normal course of business reflect the same weight of the input "steel in coil" and the output "steel in sheet."[363]

- Petitioner argues that prior to verification, Singamas "failed to properly disclose the issue with its production records and provide a remedy to account for its yield loss" and that "because steel scrap has a significantly lower surrogate value than the surrogate value for the steel coil inputs, the Department should not just deny Singamas' scrap offset," but "rather, the Department should increase Singamas' steel coil FOPs by the steel scrap offset claimed by Singamas.[364]

Singamas' Comments

- Singamas contends that during verification, Singamas explained that it "attributed the purchased weight of steel coil to the steel sheet used in production after de{-}coiling," *i.e.*, "if Singamas purchases 1 {metric ton (MT)} MT of steel in coil, the steel sheets resulting from that coil were also weighed at 1 MT, even though there may have been some minor loss in the de{-}coiling process."[365]

---

[360] *Id*.
[361] *Id*.
[362] *Id*. at 21.
[363] *Id*.
[364] *Id*. at 21-22 where Petitioner cites to Singamas' October 30th SQR at Exhibit D-19.
[365] *See* Singamas' Rebuttal Brief at page 4 where Singamas cites to Verification Exhibit VE-25 to illustrate this record keeping practice.

- Singamas argues that record evidence collected at verification shows that the weight of "steel in coil" and "steel in sheet" are the same.[366] This weight is the weight "assigned to the steel sheets after de{-}coiling, even though the resulting steel sheets are likely lighter as a result of some minor loss during the de{-c}oiling process." According to Singamas, when it reported to the Department it used 1 MT in steel sheet (after de-coiling) to produce a container, that 1 MT "reflected the weight of the steel in coil, before de{-}coiling" and "it is for this reason that Singamas does not report a yield loss at this stage of processing."[367]

- Singamas contends that its explanation, and the Department's summarization of this issue in its verification report, are missing from Petitioner's arguments which "suggests that Petitioner's entire argument is based on a faulty understanding of the evidentiary record."[368]

- Singamas argues that "the reality is that Singamas has fully reported the pre-de{-}coiling weight of steel in coil as part of its factors of production, and no further adjustment as proposed by Petitioner is necessary or appropriate."[369]

- Singamas contends that "having clarified this issue at verification, the Department should accept Singamas' reporting of steel consumption as reported and should also continue to grant Singamas the reported steel offset."[370]

Department's Position

Singamas reported that it recovered and sold certain by-products in the production of subject merchandise. In the *Preliminary Determination*, in calculating normal value, we granted these by-product offsets for Singamas, based upon the reported by-product generated during the POI.[371]

In pre-verification comments to the Department, Petitioner raised concerns regarding Singamas' semi-finished steel yield loss.[372] Specifically, Singamas' production process description shows that QPCL and HPCL generated steel scrap in their the second stage of their production processes where they cut and shaped the purchased steel coils into the semi-finished sheets subsequently used in the production of the merchandise under consideration.[373] Petitioner claimed that Singamas' allocation worksheets of steel scrap to the individual job orders or product codes comprising its U.S. sales during the POI identified yield losses for QPCL and

[366] *Id*.
[367] *Id*. at 5.
[368] *Id*.
[369] *Id*.
[370] *Id*.
[371] *See* Singamas' September 10, 2014, response to section D of the Department's antidumping duty questionnaire (DQR) at D-17.
[372] *See* Petitioner's Letter to the Department regarding "53-Foot Domestic Dry Containers from the People's Republic of China," dated December 31, 2014 (Petitioner's December 31st Comments), at 4-5.
[373] *See* Singamas' October 30th SQR at Exhibits D-3 and D-4.

HPCL.[374] Petitioner also claimed that "despite these facts and its claim to a by-product offset for steel scrap," Singamas appears to have misreported its calculation of the FOPs for the purchased steel coils."[375]

Department officials examined Petitioner's concern during the course of verification.[376] Company officials explained that sub-contractors take steel in coil, cut it, and come up with steel in sheet. All the sub-contractors are doing, company officials explained, is unrolling and slicing the steel in sheet – not punching, clipping, sculpting it, *etc*. Department officials requested any supporting documentation related to this process. Company officials provided a daily "de-coiling sheet," a record kept in the normal course of business, for December 7 and 8, 2013.[377] Company officials explained that this sheet records the transformation of steel coils into steel sheets. According to company officials, if there were any yield losses, these production records would identify them. Singamas has also explained that it "attributed the purchased weight of steel coil to the steel sheet used in production after de{-}coiling," *i.e.*, "if Singamas purchases 1 {metric ton (MT)} MT of steel in coil, the steel sheets resulting from that coil were also weighed at 1 MT, even though there may have been some minor loss in the de{-}coiling process."[378]

We note that the Department's practice is to grant respondents an offset to the reported FOPs for by-products generated during the production of the merchandise under consideration if evidence is provided that such by-product has commercial value.[379] However, as outlined above, based on Singamas' own statements to the Department and information collected at verification, Singamas incorrectly accounted for yield loss in its calculation of the FOPs for the purchased steel coils.

Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. As the necessary information needed to grant Singamas an offset to the reported FOPs for this by-product, *i.e.*, an FOP consumption rate reflective of the actual yield loss on its processing of purchased steel coils, is absent, we are denying Singamas' by-product offset for steel scrap for this final determination.

[374] *Id*.
[375] *Id*.
[376] *See* Singamas' Verification Report at 26-27.
[377] *See* Singamas' Verification Exhibit VE-5 at 2301 and 2302. Department officials examined the hard copies of the daily "de-coiling sheets" as well.
[378] Singamas' Rebuttal Brief at 4.
[379] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) and accompanying Issues and Decision Memorandum at Issue 10.

CONCLUSION

We recommend applying the above methodology for this final determination.

Agree	Disagree
✓	

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 10, 2015
Date