A-570-970
POR: 12/1/12 – 11/30/13
Public Document
AD/CVD/OIV: MC/LA/KH/WH

July 8, 2015

MEMORANDUM TO: Lynn M. Fischer Fox
Deputy Assistant Secretary
for Policy & Negotiation

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2012-2013 Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China

SUMMARY:

We analyzed the case briefs, and rebuttal briefs, submitted by interested parties in the antidumping duty administrative review of multilayered wood flooring from the People's Republic of China. As a result of our analysis, we made changes to the margin calculations for mandatory respondents Dalian Dajen Wood Co., Ltd. ("Dajen") and Jiangsu Senmao Bamboo and Wood Industry Co. Ltd. ("Senmao").

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

Background:

On December 31, 2014, the Department issued its *Preliminary Results*. On February 9, 2015, the Department received case briefs from Old Master Products Inc. ("Old Master"); Lumber Liquidators Services, LLC ("Lumber Liquidators"), Linyi Bonn Flooring Manufacturing Co., Ltd. ("Linyi Bonn"); Baishan Huafeng Wood Product Co. Ltd., Dalian Penghong Floor Products Co., Ltd., Dalian Turuss Wood Industry Co., Ltd., Dunhua City Hongyuan Wood Industry Co., Ltd., Dunhua City Wanrong Wood Industry Co., Ltd., Fujian Wuyishan Werner Green Industry Company Co., Ltd.,Fusong Jinlong Wooden Group Co., Ltd., HaiLin LinJing Wooden Products Ltd., Hangzhou Hanje Tec Co., Ltd., Hangzhou Zhengtian Industrial Co., Ltd., Huzhou Chenghang Wood Co., Ltd., Huzhou Fulinmen Imp. & Exp. Co., Ltd., Huzhou Fuma Wood Industry Co., Ltd., Jianfeng Wood (Suzhou) Co., Ltd., Jilin Forest Industry Jinqiao Flooring Group Co., Ltd., Linyi Youyou Wood Co., Ltd., Mudanjiang Bosen Wood Industry Co., Ltd., Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd., Shanghai Eswell Timber Co., Ltd., Shanghai Lizhong Wood Products Co., Ltd., Shanghai Shenlin Corp., Shenyang Haobainian Wooden Co., Ltd., Xuzhou Shenghe Wood Co., Ltd., Zhejiang Fuma Warm Technology Co., Ltd., Zhejiang Dadongwu Green Home Wood Co., Ltd., Zhejiang Longsen Lumbering Co., Ltd., Zhejiang Shiyou Timber Co., Ltd. (collectively, "Baishan et al."); Fine Furniture (Shanghai) Limited ("Fine Furniture"); Dajen, Senmao, and various separate rate applicants (collectively, "Dajen/Senmao"); Armstrong Wood Products (Kunshan) Co. Ltd. and Armstrong World Industries (collectively "Armstrong"); the Alliance for Free Choice and Jobs in Flooring[1]; and the Coalition for American Hardwood Parity ("CAHP").[2] On February 18, 2015, the Department received rebuttal briefs from Fine Furniture, Dajen/Senmao, and CAHP. On February 25, 2015 the Department received the resubmission of its February 18 rebuttal brief from Lumber Liquidators. On February 9, 2015 the Department received requests for a hearing from Fine Furniture, CAHP, Old Master, and Dajen/Senmao. All parties participated in a public hearing on April 1, 2015. On April 22, 2015, we extended the time period for issuing the final results of this review by 60 days, until July 8, 2015.

Scope of the Order:

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

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

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-

[1] *The Alliance for Free Choice and Jobs in Flooring Membership*.
[2] *CAHP Member Companies*.

density fiberboard ("HDF"), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

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

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

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS"): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.[3]

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

List of Abbreviations and Acronyms

<u>Acronym/Abbreviation</u>	<u>Full Name</u>
A-to-A	Average-to-Average
A-to-T	Average-to-Transaction
Act	Tariff Act of 1930, as amended
APA	Administrative Procedures Act
AFA	Adverse Facts Available
AUV	Average Unit Value
B&H	Brokerage and Handling
CAFC	Court of Appeals for the Federal Circuit
CAHP	The Coalition for American Hardwood Parity

[3] *Modification of the Case Reference File in ACE (November 18, 2013).*

CBP	Customs and Border Protection
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIT	Court of International Trade
CONNUM	Control Number
Dajen	Dalian Dajen Wood Co., Ltd.
Double F	Double F Limited
Department	Department of Commerce
Eiwlee	Eiwlee Industrial Co., Ltd.
EP	Export Price
FA	Facts Available
Final SV Memo	Multilayered Wood Flooring from the People's Republic of China: Final Surrogate Value Memorandum
Fine Furniture	Fine Furniture (Shanghai) Limited
FOP(s)	Factor(s) of production
GAAP	Generally accepted accounting principles
GOC	Government of China
GTA	Global Trade Atlas
HTS	Harmonized Tariff Schedule
IDM	Issues and Decision Memorandum
INA	Immigration and Nationality Act
Kg	kilogram
Km	kilometer
ME	Market economy
MT	Metric ton
NME	Non market economy
NCNT	Non-Coniferous Non-Tropical
NV	Normal value
PAFA	Partial Adverse Facts Available
PFS	Philippine Forestry Statistics
POR	Period of Review
PRC	People's Republic of China
Prelim Decision Memo	Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China (December 31, 2014)
Prelim SV Memo	Surrogate Value Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China (December 31, 2014)
SAA	Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
Senmao	Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.
SG&A	Selling, general and administrative expenses
SV	Surrogate Value
T-to-T	Transaction-to-Transaction

URAA	Uruguay Round Agreements Act
USTR	United States Trade Representative
VAT	Value Added Tax
WTO	World Trade Organization

DISCUSSION OF THE ISSUES

<u>General Issues</u>*:*

Comment 1: Differential Pricing

Fine Furniture:

- Congress has not given the Department the authority to conduct a differential pricing analysis during an administrative review, as the statutory exception that allows the Department to conduct differential pricing analyses applies only in investigations.

CAHP:

- The Department properly conducted its differential pricing and should do the same in the final results

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

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

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

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

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews. With the implementation of the URAA, the Department promulgated the final rule in 1997, in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-to-T comparison method in administrative reviews. In 2010, the Department published its *Proposed Modification for Reviews*[7] pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several WTO Dispute Settlement Body panel reports which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(l)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(l)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published the *Final Modification for Reviews*.[8] These revisions were effective for all preliminary results of review issued after April 16, 2012, as is the situation for this administrative review.

The Department's regulation at 19 CFR 351.414(b) describes the methods by which NV can be compared to EP and CEP in antidumping investigations and administrative reviews (*i.e.*, A-to-A, T-to-T, and A-to-T). These comparison methods are distinct from each other. When using T-to-T or A-to-T comparisons, a comparison is made for each export transaction to the United States.

[4] *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).
[5] *See United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010).
[6] *See Mid Continent Nail Corp.*, 712 F. Supp. 2d at 1376-77.
[7] *See Proposed Modification for Reviews*.
[8] *See Final Modification for Reviews*, 77 FR 8101.

When using A-to-A comparisons, a comparison is made for each group of comparable export transactions for which the EPs, or CEPs, have been averaged together (*i.e.*, for an averaging group). The Department does not interpret the Act or the SAA to prohibit the use of the A-to-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-to-T comparison method in administrative reviews; 19 CFR 351.414(c)(l) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department determined that in both less-than-fair-value investigations and administrative reviews, the A-to-A method will be used unless the Department determines another method is appropriate in a particular case. Because Congress did not specify the comparison method for administrative reviews, the Department has great discretion in selecting the appropriate comparison method in administrative reviews. Therefore, the Department finds that it has authority to consider the application of the A-T method as an alternative comparison methodology in administrative reviews, which the CAFC and the CIT have affirmed.[9]

1.A. Cohen's D Test

Fine Furniture:

- The Department must exclude sales that are not dumped from the results in the ratio test (*i.e.*, from sales that pass the Cohen's *d* test). Section 777A of the Act is clear that the statutory requirement that there be a "pattern" of expert prices that "differ significantly" among purchasers, regions, or time periods, relates solely to the subset of transactions alleged to be targeted (and not the universe of all transactions).
- Moreover, because the regulation governing targeted dumping was improperly withdrawn, the Department may not apply its new practice here. In any event, because the effective date of the withdrawal was for investigations initiated after May 22, 2014, and this administrative review was initiated before May 22, 2014, the withdrawal should not apply here.

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

[9] *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343 (CIT 2014), *aff'd*, *JBF RAK LLC v. United States*, Case No. 2014-1774 (CAFC June 24, 2015) (mandate pending); *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014); *DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1355-56 (CIT 2014); *CP Kelco Oy v. United States*, 978 F. Supp. 2d 1315, 1321-24 (CIT 2014).

Consequently, it is reasonable for the Department to consider both lower priced and higher priced sales in the Cohen's *d* analysis because higher priced sales are equally capable as lower priced sales of creating a pattern of prices that differ significantly. Further, higher priced sales will offset lower priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets, that can mask dumping. The statute directs the Department to consider whether a pattern of prices differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute neither provides that the Department should consider *only* higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales.

Higher priced sales and lower priced sales do not operate independently; all sales are relevant to the analysis. Higher or lower priced sales could be dumped or could be masking other dumped sales - this is immaterial in the Cohen's *d* test and the question of whether there is a pattern of prices that differ significantly because this analysis includes no comparisons with NVs. By considering all sales, higher priced sales and lower priced sales, the Department is able to analyze an exporter's pricing behavior and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differs significantly among purchasers, regions, or periods of time signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market, rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in a pricing behavior which creates a pattern, there is cause to continue with the analysis to determine whether masked dumping is occurring. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior.

The Department also disagrees that it must comply with its prior targeted dumping regulations. The targeted dumping regulations withdrawn in the *2008 Withdrawal* are no longer in effect and, when they were in effect, they applied only to investigations, not administrative reviews. This process was done with notice and opportunity to comment, and no party could reasonably have been left with the impression that the Department would be bound by the withdrawn targeted dumping regulations in administrative reviews. In any event, the targeted dumping regulation was properly withdrawn pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process.

In fact, the Department's withdrawal of its regulations in 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis. The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulations by posting a notice in the Federal Register seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.[10] As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit

[10] *See Targeted Dumping*, 72 FR 60651.

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

These comments suggested that the regulations were impeding the development of an effective remedy for masked dumping. Indeed, after considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."[18] For this reason, the Department determined that the regulations had to be withdrawn.[19] Although this withdrawal was effective immediately, and the Department did not replace the regulatory provisions with new provisions, the Department again invited parties to submit comments, and gave them an additional 30 days to do so.[20] The comment period ended on January 9, 2009, with several parties submitting comments.[21]

The course of the Department's decision-making process demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice and-comment requirement.[22] Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.[23]

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[11] *Id*.
[12] *See Public Comments Received December 10, 2007*, Department of Commerce, http://ia.ita.doc.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html (December 10, 2007) (listing the entities that commented).
[13] *See Proposed Methodology for Targeted Dumping*, 73 FR at 26372.
[14] *Id.*
[15] The public comments received June 23, 2008 and submitted on behalf of several domestic parties can be accessed at: http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html.
[16] *See, e.g.*, Letter from Various Domestic Producers to the Department, titled "Comments on Targeted Dumping Methodology, Comments," dated June 23, 2008, ("Letter from Various Domestic Producers") at 2. (http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/kdw-td-cmt-20080623.pdf).
[17] *See, e.g.*, Letter from Committee to Support U.S. Trade Laws, to the Department: "Comments on Targeted Dumping Methodology" at 25; *see also* Letter from Various Domestic Producers at 29.
[18] *See 2008 Withdrawal*, 73 at 74930-31.
[19] *Id*., at 74931.
[20] *Id.*
[21] *See Public Comments Received January 23, 2009*, Department of Commerce (January 23, 2009), available at: http://enforcement.trade.gov/download/targeted-dumping/comments-20090123/td-cmt-20090123-index.html.
[22] *See, e.g.*, *Arizona*, 211 F.3d at 1299-1300 (holding that the EPA's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).
[23] *See Mineta*, 373 F.3d at 120 (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

Rather, where the public is given the opportunity to comment meaningfully consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether the agency has, as a whole, acted in a way that is consistent with the statute's purpose.[24] Here, similar to the agency in *Mineta*, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in *Mineta*, the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in *Mineta* found all of those facts to indicate that the agency's actions were consistent with the APA, so too do the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA. The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.[25] Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulations demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, assuming for argument's sake that the two rounds of comments that the Department solicited before the withdrawal of the regulations were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."[26] The CAFC has recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide; in *National Customs Brokers*, the CAFC rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment.[27] Moreover, although the U.S. Customs Service solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering those regulations.[28] The U.S. Customs Service explained that "good cause" existed to comply with the APA's usual notice and comment requirements because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."[29] The Court recognized that this explanation was a proper invocation of the "good cause" exception and explained that soliciting and considering comments was both unnecessary (because Congress had passed a statute that superseded the regulation) "and contrary to the public interest because the public would benefit from the amended regulations."[30] For this reason, the Court affirmed the regulation against the plaintiff's challenge.[31]

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[24] *Id.*
[25] *See, e.g.*, *First Am.*, 222 F.3d at 1015.
[26] *See* 5 USC 553(b)(B).
[27] *See, e.g.*, *National Customs Brokers*, 59 F.3d at 1223.
[28] *Id.*, at 1220–21.
[29] *Id.*, at 1223.
[30] *Id.*, at 1224.
[31] *Id.*

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

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

Fine Furniture:

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

Department Position: The recent decision by the CAFC in *Union Steel* resolved the outstanding question of whether the Department's statutory interpretation is reasonable. The CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-to-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-to-A comparison method in investigations.[32] The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.[33] Indeed, the court noted that although the Department recently modified its practice "to allow for offsets when making A-to-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."[34]

Likewise, in *US Steel Corp.*, the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-to-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the court recognized that the Department may use zeroing when applying the A-to-T comparison method where patterns of significant price differences are found.[35]

Lastly, the Department disagrees with Fine Furniture's proposition that the denial of offsets with the A-to-T method is inconsistent with the United States' international obligations. First, neither the WTO's Dispute Settlement Body nor the Appellate Body have issued reports regarding the denial of offsets with the application of an alternative comparison method based upon the A-to-T method as described in the second sentence of Article 2.4.2 of the WTO Antidumping

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[32] *See Union Steel*, 713 F.3d at 1106.
[33] *Id.*
[34] *Id.*
[35] *See United States Steel Corp. v. United States, 621 F.3d 1351*, (Fed. Cir. 2010).

Agreement. Furthermore, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[36] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[37] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[38] With regard to the denial of offsets when using an alternative comparison method based on the A-to-T method, the Department has issued no new determination or the United States has not adopted any change to its methodology pursuant to this statutory procedure.

Comment 2: Whether the VAT Adjustment is Correctly Applied

Dajen/Senmao:

- In the final results, the Department should revise its VAT calculation from the preliminary results, using the VAT actually reported by Senmao.
- The formula used by the Department to calculate VAT is not reflective of the actual amount of VAT assessed by the GOC on Senmao's exports of the subject merchandise because it does not take into account offsets for VAT refunded on inputs.

CAHP:

- The Department's treatment of VAT is consistent with its announced methodology and should be maintained for purposes of the final results.

Department's Position: In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein irrecoverable) VAT in certain NMEs in accordance with section 772(c)(2)(B) of the Act.[39] In this announcement, the Department stated that when a NME government has imposed an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[40]

In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[41] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[42] This amounts to a tax,

[36] *See Corus Staal*; *accord Corus Staal* 2007; *see also* the SAA at 659 ("WTO dispute settlement panels will not have any power to change U.S. law or order such a change.").
[37] *See, e.g.*, 19 U.S.C. §§ 3533, 3538.
[38] *See, e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).
[39] *See Methodological Change for Implementation of Section 772(c)(2)(B)*.
[40] *Id.*, 77 FR at 36483; *see also Chlorinated Isos 11/12 Final* and the accompanying IDM at Comment 5.
[41] *See, e.g.*, *Wood Flooring AR1 Final* and the accompanying IDM at Comment 3; *Methodological Change*, 77 FR at 36483.
[42] *See, e.g.*, Jiheng Chemical Co., Ltd. Response to Supplemental Questionnaire," April 28, 2014 ("Jiheng Supplemental response"), at 16-19 and Exhibit 21.a, "Calculation of Non-refundable and non-deductible amount,"

duty or other charge imposed on exports that is not imposed on domestic sales. Where this irrecoverable VAT is a fixed percentage of EP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. export price downward by this same percentage.[43]

In the Section C response in field 45.0, Senmao reported that it incurred zero net VAT expense based on its own formula derived by an allocation on all VAT paid for inputs of merchandise for both domestic and export markets. However, 19 CFR 351.401(c) requires that the Department rely on price adjustments that are "reasonably attributable to the subject merchandise." As respondents acknowledge, the PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. In this case, as respondents acknowledge, the applicable VAT rate is 17 percent and the refund rate is nine percent.[44]

The Department has consistently found that the most straightforward, consistent, and verifiable method to make this adjustment under section 772(c)(2)(B) of the Act is by relying on the standard formula provided for under Chinese tax law and regulation. In that respect, the Department notes that the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise. The Department does not examine the company's books and records for how they capture and account for all VAT incurred and refunded, which could be done in a number of different ways. Rather, the Department relies on the published rates identified in Chinese law and regulation, which are clear and readily verifiable, and, as discussed above, product-specific. For all of the reasons stated above, we will not consider allocations across all company sales or across sales of products with different VAT schedules. The irrecoverable VAT liability is determined on a product-specific basis, and it is on this basis that the Department will consider respondent-specific claims for adjustments to the standard formula, taking into account whether such adjustments are permitted under Chinese law and regulation and supported with record evidence.

Comment 3: Fine Furniture's Status as a Voluntary Respondent

Fine Furniture:

- The Department should accept Fine Furniture as a voluntary respondent because Fine Furniture has fulfilled the requirements of a mandatory respondent and the Department therefore must calculate an individual rate according to section 782(a) of the Act.
- According to the SAA accompanying the URAA, the Department, "consistent with Article 6.10.2 of the Agreement, will not discourage voluntary responses and will

of the "Notice of the Promotion of Tax Exemption, Deduction and Refund Policy for Export Products;" *see also Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483 (June 19, 2012) ("*Methodological Change*").

[43] *See Methodological Change*, 77 FR at 36483.

[44] See Senmao's Section C Response (June 30, 2014) at Exhibit C-3.

endeavor to investigate all firms that voluntarily provide timely responses in the form required…"[45]

- If the Department assigns a zero or *de minimis* rate to the mandatory respondents in the final results then Commerce should consider Fine Furniture's voluntary response, having met all requirements, as evidence that Fine Furniture should also be given a zero or *de minimis* rate.
- The Department's rationale for limiting the number of respondents in this review is unlawful as it is contrary to CIT precedent. The CIT has ruled in *Zhejiang Native*, that a large number of exporters is the only valid reason to limit the number of individually examined companies. Nonetheless, the Department cited "complexity" and its workload in other cases to justify the limited selection of only two respondents for individual investigation. When rejecting Fine Furniture as a voluntary respondent, the Department again unlawfully used factors other than a large number of respondents—"*i.e.* a complicated analysis of {Senmao}and time and resource constraints"—as justification for not examining Fine Furniture's response.
- Even if the Department satisfied the statutory exception for limiting its individual examination to a reasonable number of companies, "limiting the number of individually examined respondents is intended to be the exceptional circumstance, not the norm."[46] Indeed, on numerous occasions, the Department has investigated six or more respondents.

CAHP:

- The Department should not accept Fine Furniture as a voluntary respondent.
- The Department did not conduct a substantive review of the questionnaire responses submitted by Fine Furniture or issue supplemental questionnaires to the company.
- Fine Furniture argues that the Department violated section 782(a) of the Act by not accepting the company as a voluntary respondent. However, the CIT has specifically rejected this identical argument in *Longkou Haimeng*. Moreover, the CIT's decision in *Zhejiang Native* was factually distinguishable given the sheer number of companies covered by this review.

Department's Position: When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination who voluntarily provide the information requested of the mandatory respondents if (1) the information is submitted by the due date specified for exporters or producers initially selected for examination and (2) the number of such companies that have voluntarily provided such information is not so large that individual examination would be unduly burdensome and inhibit the timely completion of the review. In this review, the Department limited the number of respondents under this statutory provision. In its respondent selection memorandum, the Department notified parties early in the proceeding that it lacked the resources to examine all potential producers/exporters of subject merchandise.[47] Further, Fine Furniture was notified that it was not selected for individual examination as a mandatory respondent, and was made aware that constraints on the Department's resources could limit the

[45] *See* H.R. Doc. No. 103-316, at 873 (1994), reprinted in 1994 U.S.C.C.A.N. 4040.
[46] *Carpenter Tech Corp. v. United States*, 662 F. Supp. 2d 1337, 1345 (CIT 2009).
[47] *See* Respondent Selection Memorandum, at 3.

Department's ability to examine information submitted by companies seeking voluntary respondent treatment.[48]

The Department disagrees with Fine Furniture's claim that it is entitled to an individual rate because it has fulfilled all the requirements pursuant to section 782(a) of the Act and, instead, the Department has assigned Fine Furniture the antidumping duty rate calculated for the companies that were not individually investigated but were granted a separate rate for the final results. Early in this review, the Department carefully considered all available options regarding the selection of respondents and concluded that it was not practicable to determine individual weighted average dumping margins for each known exporter and producer of multilayered wood flooring.[49] Therefore, pursuant to section 777A(c)(2) of the Act, the Department exercised its discretion to limit its selection of respondents to two producers/exporters.[50]

As discussed in the Department's respondent selection memorandum, the Department determined that it lacked the resources required to examine more than two respondents in this review.[51] However, the Department noted that if it received voluntary responses, it would "evaluate the circumstances at that time" in determining whether to accept any voluntary respondents in this review.[52] When Fine Furniture submitted a response to the Department's questionnaire, we determined that selecting Fine Furniture as a voluntary respondent would be unduly burdensome and inhibit the timely completion of the review. Specifically, in our *Preliminary Results*, we found that both companies selected for individual examination, Dajen and Senmao were participating in this review and that neither company had previously been subject to individual review. The Department also noted that it needed to submit multiple questionnaires in order to become familiar with both companies' corporate structures, sales and FOPs. We further noted that our analysis of Dajen was especially complicated due to its possible affiliations with several other companies located in different countries. As a result, we determined that the additional workload of selecting a voluntary respondent would be unduly burdensome given the Department's current resource availability and would inhibit timely completion of this review.[53] Thus, consistent with section 782(a)(2) of the Act, the Department did not review Fine Furniture's unsolicited response. In doing so, contrary to Fine Furniture's claims, the Department explained why it was reasonable to examine two, but not three, respondents. Furthermore, that the Department may have examined six respondents in certain earlier proceedings does not mean that the Department must always examine six respondents. The Department's determination is made in each segment, and its determination was reasonable in this administrative review.

[48] *See* Respondent Selection Memorandum.
[49] *See* Section 777A(c) (1) of the Act; Respondent Selection Memorandum.
[50] Section 777A(c)(2) of the Act states, in pertinent part: If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation, the administering authority may determine the weighted average dumping margin for a reasonable number of exporters by limiting its examination to…exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.
[51] *See* Respondent Selection Memorandum at 3.
[52] *Id.* at 8.
[53] *See Preliminary Results at 5*.

The Department disagrees with Fine Furniture's assertion that the law requires that the Department examine Fine Furniture in this review. While Fine Furniture may have timely submitted the information required by section 782(a)(1) of the Act, as explained above, the Department concluded that it would be unduly burdensome and inhibit timely completion of this review to select and review Fine Furniture as a voluntary respondent. Because section 782(a)(2) of the Act was not satisfied in this case, we were not statutorily obligated to select Fine Furniture as a voluntary respondent. Furthermore, we find Fine Furniture's reliance on *Zhejiang Native* to be misplaced. *Zhejiang Native* addressed the threshold question of whether there were a large number of producers/exporters involved in a review, thus warranting limited examination under section 777A(c)(2) of the Act.[54] That case did not concern the distinct legal question of whether we must select a company as a voluntary respondent under section 782(a) of the Act.

The Department's interpretation of 782(a) of the Act is supported by the CIT's decision in *Longkou Haimeng*. In that case, the CIT upheld the Department's decision to limit the number of respondents selected for examination to mandatory respondents without calculating individual dumping margins for companies that requested voluntary respondent treatment pursuant to 19 CFR 351.204(d). In its decision, the CIT explicitly rejected the argument that section 782(a) of the Act *requires* the Department to individually examine voluntary respondents that have participated in the proceeding.[55] In rejecting this argument the CIT made the following finding:

> It is clear from the language of the SAA and the {Act} itself that Congress has spoken on the matter. The authority to limit the number of respondents for examination rests "exclusively" with Commerce. Therefore, the Court finds that Commerce's determination to limit its review to three mandatory respondents was within the bounds of its statutory authority.[56]

Thus, it is clear that the Department's decision not to examine voluntary respondents in this review is consistent with Department practice, legislative intent, and relevant CIT cases.
The Department further disagrees with Fine Furniture's argument that the Department must assign a zero or *de minimis* margin to Fine Furniture if the two mandatory respondents are given a zero or *de minimis* margin and that it would be unlawful to assign a greater than *de minimis* rate. The Department agrees with CAHP that no substantive review of the questionnaire responses submitted by Fine Furniture took place. Likewise no supplemental questionnaires were sent to Fine Furniture. For reasons previously explained, the Department has determined since the respondent selection of this review that examining a voluntary respondent would be unduly burdensome and delay the outcome of this review. The Department will not assign a zero or *de minimis* margin merely because information was volunteered by Fine Furniture, without a proper analysis. Furthermore, Fine Furniture's rule in effect would require the Department to evaluate a prospective voluntary respondent's data for purposes of determining a separate rate for that company. But this would defeat the statutory language, which expressly allows the Department to reject individual review of a voluntary respondent where (as here) it would be unduly burdensome to do so.

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[54] *See Zhejiang Native*, 637 F. Supp.2d at 1263.
[55] *See Longkou Haimeng*, 581 F. Supp. 2d at 1351-52.
[56] *Id.* at 1351.

For the foregoing reasons, the Department has not calculated an individual dumping margin for Fine Furniture and will not accept Fine Furniture as a voluntary respondent.

Comment 4: Whether Fine Furniture's Liquidation Instructions Should Include the Name of Its Affiliate Listed on the Import Documentation Submitted to U.S. CBP

Fine Furniture:

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

Department's Position: In the first administrative review, the Department found Fine Furniture and Double F to be a single entity based on a finding of affiliation between Fine Furniture and Double F, and the extent to which both companies had intertwined operations with respect to the sales of the merchandise under consideration.[57] Because there have been no changes to the facts which supported that decision in the present review, we are continuing to treat the companies as a single entity in this review. Accordingly, in the final results of this administrative review, the Department's cash deposit and liquidation instructions to be issued to CBP will reflect the names of both Fine Furniture and Double F.

Comment 5: Whether the Department Correctly Applied the PRC-Wide Rate to Linyi Bonn

Linyi Bonn:

- Linyi Bonn provided to the Department all necessary separate rate information as part of a new shipper review that overlapped the POR of the instant review.
- The Department fully reviewed Linyi Bonn's information in the new shipper review; therefore, applying adverse facts available in the preliminary results is not in accordance with law.
- The decision in *Grobest* addressed the importance of case-specific facts that require a weighing of "the interests in accuracy and fairness against the burden placed on the Department" by accepting the late submission.[58] Based on *Grobest*, Linyi Bonn should be granted the zero rate that it had in the new shipper review.
- Unlike cases involving non-responding companies, the Department has specific evidence from the new shipper review demonstrating that the AFA rate is not valid for Linyi Bonn.
- Rather than use the AFA rate, the Department could have determined that the best available and most accurate secondary information was Linyi Bonn's own calculated rate that covered the POR for which Linyi Bonn had shipments. The Department did not

[57] *Wood Flooring AR1*, and accompanying IDM at Comment 29.
[58] *See Grobest*, 815 F. Supp. 2d at 1366-67.

explain why it did not use the corroborated information from the new shipper review but instead used outdated information for a company different from Linyi Bonn.

CAHP:

- Whether Linyi Bonn had any shipments during the latter six months of the instant review period could only be established by Linyi Bonn itself.
- Linyi Bonn failed to comply with clearly delineated procedures and deadlines in this review and is, therefore, situated like any nonresponsive, non-cooperating party in an administrative review.

Department's Position: As an initial matter, Linyi Bonn mistakenly argues that the Department was required to corroborate the margin assigned to Linyi Bonn in the *Preliminary Results* because it was AFA based on secondary information. Contrary to Linyi Bonn's argument, the Department did not apply AFA under section 776 of the Act to Linyi Bonn at all. Rather, the Department explained that because Linyi Bonn did not submit to the Department either a timely certification of no sales, a separate rate application, or a separate rate certification, it remained subject to this review and had failed to demonstrate that it is eligible for a separate rate. In accordance with our established NME methodology, we considered Linyi Bonn to be part of the PRC-wide entity and preliminarily assigned the NME rate to Linyi Bonn.[59] Considering Linyi Bonn to be part of the PRC-wide entity due to its failure to establish its entitlement to a separate rate is not an AFA determination.[60] As a result, no corroboration of the margin with respect to Linyi Bonn is necessary.[61]

Linyi Bonn was a respondent in a new shipper review that overlapped the first six months of the instant review. As a result of the new shipper review, the Department determined that Linyi Bonn was eligible for a separate rate, and the Department calculated a *de minimis* margin for Linyi Bonn.[62] Linyi Bonn argues that it provided to the Department all necessary separate rate information as part of the new shipper review, suggesting that it was unnecessary to submit any information in the instant administrative review. Linyi Bonn apparently believes that it has no obligation to participate in the instant review, but that it can merely elect to keep the separate rate status and the margin from the new shipper review. In fact, Linyi Bonn goes so far as to assert that there is "no need to analyze any information for purposes of a separate rate in this review."[63] In order to maintain separate-rate status from one segment to another, "the Department requires

[59] *See Preliminary Results*, 80 FR at 1390, n. 9.
[60] *See Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342, 1351 (CIT 2013), *aff'd*, 581 F. App'x 900 (Fed. Cir. 2014) ("But Commerce did not apply adverse facts available to AT & M, Commerce rather found that AT & M had not rebutted the presumption of state control and assigned it the PRC-wide rate. 'These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent who has not received a separate rate.'").
[61] *See Peer Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1327 (CIT 2008) ("CPZ was not assigned an AFA rate specific to the company itself; it was assigned the PRC-wide entity rate based on total AFA. Contrary to CPZ's argument, there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company.").
[62] *See* Linyi Bonn's Case Brief at 5. (Linyi Bonn claims that its "separate rate status and shipments were already fully analyzed in the new shipper review.").
[63] *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews; 2012-2013*, 79 FR 66355 (November 7, 2014).

entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate."[64]

Separate rate certifications were "due to the Department no later than 60 calendar days after publication" of the notice of initiation.[65] Furthermore, the Department's initiation notice also stated that where "a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review . . . , it must notify the Department within 60 days of publication" of the notice of initiation.[66] In other words, in order to maintain its separate rate status, Linyi Bonn should have submitted either a separate rate certification or a no shipment certification, as appropriate, no later than April 4, 2014. It timely submitted neither, nor did Linyi Bonn request an extension of time to submit anything in this review. Therefore, when Linyi Bonn submitted a no shipments certification following the *Preliminary Results*, that submission was rejected consistent with the Department's practice and regulations.[67]

Furthermore, two other companies, Dalian Huade Wood Product Co., Ltd. ("Dalian Huade") and Zhejiang Fuerjia Wooden Co., Ltd. ("Zhejiang Fuerjia"), that participated in the same new shipper review as Linyi Bonn, submitted timely certifications that they had no shipments during the instant review other than those already reviewed in the new shipper review, and both companies also certified that they served Linyi Bonn's counsel with copies of their no shipment certifications.[68] In other words, not only did the Department's *Initiation Notice* include specific instructions on submitting separate rate certifications and no shipment certifications, but Linyi Bonn was also aware of the fact that Dalian Huade and Zhejiang Fuerjia both submitted timely no shipment certifications in the instant review despite having participated in the same new shipper review with Linyi Bonn.

Linyi Bonn argues that the Department has previously not ignored information from a new shipper review where there is a concurrent new shipper review, citing *WBF 2012 NSR Preliminary Results*. Linyi Bonn acknowledges that in the cited reviews of wooden bedroom furniture, the new shipper review and the administrative review covered exactly the same 12-month period, and states that the "current situation is slightly different" because the information it submitted in the new shipper review covered just the first half of the administrative review.[69] The Department considers this difference to be significant. In the wooden bedroom furniture case cited above, the information provided in the new shipper review covered the same period as the administrative review in its entirety. In Linyi Bonn's case, the new shipper review overlapped the administrative review period by six months, meaning that just as much of the administrative review does not overlap with any portion of the new shipper review. It is

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[64] *See Initiation Notice*, 79 FR at 6148, in which the Department initiated a review of Linyi Bonn; *see also Fresh Garlic from the PRC* and accompanying IDM at Issue 2 ("{A} party's separate rate status must be established in each segment of the proceeding in which the party is involved.").
[65] *See Initiation Notice*, 79 FR at 6148.
[66] *Id*. at 6147.
[67] *See* Letter from the Department to Linyi Bonn, regarding "Rejection of Submission of Partial No Shipment Certification Filed in the 2012-2013 Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China," dated January 30, 2015.
[68] *See* April 2, 2014 letters to the Department from Dalian Huade and Zhejiang Fuerjia, respectively.
[69] *See* Linyi Bonn's Case Brief at 6.

precisely for this reason that it was incumbent upon all three respondents in the new shipper review to submit timely information in the administrative review to certify that they continue to meet the criteria for obtaining a separate rate. or that they made no reviewable shipments during the POR.

Linyi Bonn also cites the CIT decision in *Grobest* as support for its position, in which the CIT considered whether the Department was justified in rejecting a separate rate certification filed after the deadline set by the Department. According to Linyi Bonn, the CIT in *Grobest* found that the Department abused its discretion when it rejected the respondent's untimely filed separate rate certification, finding (1) that "every indication suggests that the burden of reviewing the SRC would not be great", (2) that there was a "stark contrast" between the Vietnam-wide rate of 25.76% given to the respondent and the 3.92% rate it would have received if the SRC had been accepted and (3) that there was no evidence supporting a conclusion that "the burden on Commerce would be sufficient to outweigh the interests in fairness and accuracy."[70] Linyi Bonn claims that in *Grobest*, the CIT addressed the importance of considering case-specific facts when weighing the fairness and accuracy against the burden placed on the Department.

However, the Court in *Grobest* also explained that it would "review on a case-by-case basis whether the interests of accuracy and fairness outweigh the burden placed on the Department and the interest in finality."[71] There are important differences that distinguish *Grobest* factually from the instant review. Perhaps the clearest distinction between the two is that in *Grobest* the court stated that, although the rejected separate rate certification "was ninety-five days late, it arrived early in the review process: more than seven months before Commerce released the preliminary results, and one year before Commerce released the final results."[72] Linyi Bonn, by contrast, attempted to submit a no shipment certification 293 days after the deadline, and 22 days *after* the preliminary results signature date. In the interests of fairness and finality, parties cannot wait until after the preliminary results to decide whether it is in their interest to submit information to the Department. As explained above, Dalian Huade and Zhejiang Fuerjia, the other companies that participated in the new shipper review with Linyi Bonn, both submitted timely no shipment certifications in the instant review, under precisely the same circumstances as Linyi Bonn. All parties must be held to the same deadlines, which were made clear to all parties in this review. Of the three companies that participated in the same new shipper review, only Linyi Bonn elected to wait until after the *Preliminary Results* to attempt to submit untimely information to the Department.

Finally, the Department disagrees with Linyi Bonn's argument that the necessary information on its shipments was already on the record from the CBP data results that the Department obtained for purposes of respondent selection. The Department has previously determined, and the CIT has agreed, that the information from the CBP data queries alone is not sufficient to reliably conclude that there were no entries of subject merchandise from a company under review during

[70] *See* Linyi Bonn's Case Brief at 4, citing *Grobest* 815 F. Supp. 2d 1342, 1366-67 (CIT 2012).
[71] *See Grobest*, 815 F. Supp. 2d at 1365.
[72] *Id*. at 1367.

the POR.[73] Although CBP data queries are an important tool in our analyses, the Department has recognized that these same data are not always complete or conclusive.[74] Thus, the Department does not rely solely on CBP data queries as a dispositive source of data on company-specific exports for purposes of determining whether a company had shipments. Moreover, as stated in the *Initiation Notice*, the Department requires that a company timely certify that it had no exports, sales, or entries during the POR. The Department considers making a finding of no shipments only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. The company's own certification is considered a necessary piece of evidence of no shipments, to be considered along with the CBP data. These submissions are subject to verification in accordance with section 782(i) of the Act. After receiving a timely, properly filed no-shipment certification, it is the Department's practice to confirm the respondent's certification by making a no-shipment inquiry with the CBP. It is only with this evidence on the record that the Department finds that it has a sufficient basis upon which to make a determination of no shipments.

<u>General Issues Surrogate Value Issues:</u>

Comment 6: Paint and Pigments

CAHP:

- Senmao failed to provide sufficiently detailed information about its paint inputs to the Department on multiple occasions. This should be taken as a refusal to cooperate with the Department and AFA should be applied to its paint inputs.
- Paint is a major component of Senmao's total cost of manufacturing.[75]
- Because of Senmao's failure to provide an adequate description of its paint, the Department cannot definitively identify Senmao's paint as being based on acrylic or vinyl polymers or polyesters. In the most recently completed administrative review of *Steel Wire Garment Hangers from China*, the Department was faced with this same exact issue for a respondent's paint FOP and concluded that HTS 3208.90.90-000 was the proper valuation given the lack of information on the record.[76]

Dajen/Senmao:

- The information provided by Senmao and Dajen should be used to value paints and pigments. Specifically, HTS 3208.90.19-000 should be used to value Senmao's paint and HTS 3207.20.90-000 to value Senmao's pigments. While Senmao and Dajen inadvertently reversed the suggested values (recommending the paint HTS for pigment and vice versa) in its surrogate submission it placed the correct data on the record. The Department should use that information in the final results.

[73] *Hyosung Corp. v. United States*, Slip. Op. 11-34, at 10 (CIT March 31, 2011) ("Furthermore, as Commerce explained, CBP data alone is not a conclusive statement of whether a respondent had shipments because it does not capture all entries, such as those not made electronically.").

[74] *See Fresh Garlic from the PRC* and corresponding IDM at Issue 2.

[75] *See* Senmao's Section C & D Response (June 30, 2014) at Exhibit D-10 Part 2. Senmao reported total paint consumption costs and total cost of manufacturing during the POR.

[76] *See Hangers 2011-2012*, and accompanying IDM at Comment 10.

- For Dajen, the Department should use HTS 3208.20.90-000 for paints and varnish because Dajen has identified its paint as based in acrylic.[77] The Department should not continue to use Thai HTS 3208.90.90-000 for Dajen's paint value since Dajen's paint is based on acrylic. The Department should use Thai HTS 3207.20.90-000 to value Dajen's pigment FOPs.
- CAHP's citation to HTS chapter 3208 in its pre-preliminary comments, used to value paint, is misleading and inaccurate. CAHP makes it seem as if it is quoting from Thai HTS heading 3208; however, CAHP has made certain alterations to the heading language by adding to the various subheadings "(*i.e.*, paint)."[78]

CAHP (rebuttal):

- The HTS proposed by Senmao to value its paint, Thai HTS 3208.90.19-000, covers "Varnishes (including lacquers), exceeding 100ºC heat resistance – Other". Senmao's only description of its paint FOP was "paint, nonaqueous."[79] Senmao never described its paint as "varnish," nor did it provide any documentation to support distinguishing its paint as having the characteristic of exceeding 100 degrees Celsius heat resistance. Therefore, the Department should value Senmao's paint with the less specific nonaqueous paint classified under Thai HTS 3208.90.90-000 which has an AUV of $9.09/KG.
- The Department should continue to value mandatory respondents' pigment with Thai HTS 3204.17.00-000 because Chapter 32 of Thailand's tariff schedule shows the following description for all classifications under HTS 3207. "Prepared pigments, prepared opacifiers and prepared colours, vitrifiable enamels and glazes, engobes (slips), liquid lustres and similar preparations, of a kind used in the ceramic, enameling or glass industry; glass frit and other glass, in the form of powder, granules or flakes." The mandatory respondents operate in the wood industry not in the ceramic, enameling, or glass industries; therefore, HTS 3207 is not applicable and Thai HTS 3204.17.00-000 should be used.

Dajen/Senmao (rebuttal):

- There is no basis for the Department to use any form of AFA regarding the paint FOP because Senmao has been fully cooperative and timely with the Department after having been chosen late in the POR. The Department has not informed Senmao to the contrary or indicated that its answers have been deficient and the statutory requirements for AFA have not been met. Furthermore, record evidence is sufficiently clear indicating the correct factors for Senmao's inputs and there is no need to resort to secondary information.
- Senmao corrected its clerical error and indicated that HTS 3208.90.19-000 should be used, thus Senmao indicated the same thing as if it had described its paint as "paint nonaqueous, which is varnishes (including lacquers), exceeding 100ºC heat resistance." There is no other record evidence indicating HTS 3208.90.19-000 is not accurate.

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[77] *See* Dajen's Supplemental Section A, C, &D Response, July 3, 2014, at Exhibit SD-2 Input Checklist.
[78] *See, e.g.*, Petitioners' Comments Prior to Preliminary Results and Submission of Factual Information, dated November 3, 2014 at 10.
[79] *See* Senmao's Supplemental Section A, C & D Response (September 29, 2014) at Exhibit SD-1.

> Because there is no such evidence CAHP's citation to *Steel Wire Garment Hangers from China* is inapposite.

Department's Position: The Department reviews SV information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[80] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[81] As established in the *Preliminary Results*, the Department continues to find that the Thai import data obtained from GTA for HTS 3208.20.90-000 are publicly available, broad market averages, contemporaneous with the POR, tax-exclusive, and specific to the inputs in question, satisfying the critical elements of the Department's SV test.

Regarding CAHP's argument for use of PAFA/FA methodology regarding Senmao's paint inputs, the Department agrees in part. We agree that information needed to assign a SV for Senmao's paint input is not available on the record. The only information available on the record is Senmao's description of its input as "paint, nonaqueous,"[82] as well as the HTS category suggested by Senmao of 3208.90.19-000. However, that suggested HTS category is specific to varnishes and not the input that Senmao reported using (*i.e.*, "paint"). This distinction is relevant given that the HTS category from which we are selecting an SV expressly distinguishes paints from varnishes.[83] Furthermore, nothing in Senmao's response suggests that heat resistance of a particular temperature is an aspect of Senmao's paint input. Due to this discrepancy between what Senmao reported and the suggested HTS category, we do find that we can we rely upon the HTS category that Senmao has proposed and that necessary information is missing from the record (*i.e*., a detailed enough description of Senmao's paint input). Given this late stage in the proceeding, the Department is not able to request additional information from Senmao about the paint it uses. Accordingly, we have looked elsewhere in the record when valuing Senmao's paint input. In doing so, we note that we have not applied an adverse inference within the meaning of section 776(b) of the Act because we do not find that Senmao has failed to cooperate to the best of its ability in responding to our requests.

All parties agree that Senmao's paint should be classified under the subheading in the Thai HTS schedule for "Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium." The HTS schedule further breaks out "Paints and varnishes" into those "{b}ased on polyester" (3209.10), "{b}ased on acrylic or vinyl polymers" (3208.20), and "{o}ther" (3208.90).[84] The record contains no reliable information regarding the precise composition of Senmao's paint input. Under these circumstances, the Department finds Thai HTS 3208.20.90-000 to be the best available heading for valuing Senmao's paint because the Department has used HTS subheading

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[80] *See Lightweight Thermal Paper* and accompanying IDM at Comment 9.
[81] *See*, *e.g.*, *TRBs* and accompanying IDM at Comment 6.
[82] *See* Senmao's Supplemental Section A, C & D Response (September 29, 2014) at Exhibit SD-1.
[83] *See* Petitioners' Surrogate Value Rebuttal Comments (August 25, 2014), at Exhibit 6 (describing HTS heading 32.08).
[84] *Id.*

3208.20.90-000 to value paint in the original investigation[85] of this proceeding as well as for the other mandatory respondent in this review and has determined that it represents a kind of paint that can be used to produce subject merchandise (unlike CAHP's suggested HTS category of 3208.90.90-000, the exact contents of which are unknown, and which has not been shown to be used in the wood flooring industry). Further, unlike HTS 3208.10 (paints based on polyester), 3208.20 covers two varieties of paint (acrylic and vinyl) and thus covers a wider range of possible paint varieties that Senmao may have used. Finally, as noted above, HTS 3208.90 (related to other) primarily includes varnishes with varying degrees of heat resistance and applications in dentistry, along with an undefined "Other" category. There is no record evidence of Senmao's paint having attributes such as exceeding 100 degrees Celsius heat resistance, nor did Senmao report using a varnish (instead, as found above, it reported using paint). Furthermore, without any information about the contents of the undefined "Other" category, the Department cannot find that it is a better source than HTS 3208.20.90-000, which we know can be used in the production of subject merchandise.

Next, the Department finds Thai HTS subcategory 3208.20.90, in particular, is more specific to Senmao's paint input, because the broader HTS category 3208.20 is inclusive of HTS subcategory 3208.20.40, covering "Anti-fouling or anti-corrosive paints for ships' hulls," and HTS subcategory 3208.20.70, covering "Varnishes (including lacquers)---of a kind used in dentistry," both of which we know are not applicable to wood flooring. Accordingly, for these final results, we will continue to value Senmao's paint input with HTS 3208.20.90-000.

Regarding Dajen's argument, we note that Dajen is mistaken in arguing that we used 3208.90.90-000 to value its paint input in the *Preliminary Results*. We agree that Dajen's paint input is properly valued under Thai HTS 3208.20.90-000 because Dajen submitted record evidence establishing that it used an acrylic-based paint in producing subject merchandise. Thus, that is the HTS that we used for Dajen in the *Preliminary Results* and that we will continue to use in these final results.

Regarding the pigment SV, we agree with CAHP that the description of products falling under chapter 3207 for pigments is not inclusive of wood flooring, as it expressly describes pigments related to particular uses. Specifically, the chapter 3207 product description includes pigments "of a kind used in" the ceramics, enameling, and glass industries. Respondents are not engaged in the ceramics, enameling, or glass industries.[86] Therefore, Thai HTS 3207 does not apply to the valuation of pigments used in wood flooring. By contrast, Thai HTS 3204.17.00-000 describes "{p}igments and preparations based thereon" without limitation on the industries in which those pigments are based. Accordingly, for the final results, we have continued to value pigments with Thai HTS 3204.17.00-000 for both Dajen and Senmao.[87]

[85] *See Wood Flooring LTFV Final*, and accompanying IDM at Comment 19 (using Philippine GTA data, but describing it as relating to paints "based on acrylic and vinyl polymers").
[86] *See* Senmao Section A response at exhibit A-3.
[87] *See* Final SV Memo.

Comment 7: Surrogate Financial Ratios

Dajen/Senmao:

- Surrogate producer Eiwlee is far different from Senmao and Dajen. Unlike Eiwlee, neither Dajen nor Senmao produce furniture, gift decorative items, wooden housewares, or household wooden items.
- Eiwlee is a member of "The Thai Furniture Industries Association" and the "Thai Housewares Trade Association," with no evidence of any membership in any association of flooring producers.
- The Department has already addressed the issue of whether a furniture/wood flooring producer is similar to wood flooring producers or plywood producers. Specifically, the Department has found that plywood and multilayered wood flooring are similar products and that wooden furniture products are different from multilayered wood flooring in terms of product complexity.
- Because Eiwlee makes furniture, it makes a product that we have found to be distinct from multilayered wood flooring. By contrast, plywood is very similar to multilayered wood flooring, and plywood producer Neotech's financial statements overlap a portion of the POR and are therefore contemporaneous. The Department should thus use Neotech's statements in the final results.

Lumber Liquidators:

- The Department should not calculate surrogate financial ratios based on Eiwlee's financial statements because Eiwlee is a producer of furniture and wooden housewares and kitchenware.
- The Department should instead rely on Neotech's financial statements because it is a producer of comparable merchandise.
- If the Department does not reject Eiwlee's financial statements and use Neotech alone, it should calculate financial ratios based on an average of the two companies.

Fine Furniture:

- The Department has a long-standing practice of rejecting financial statements of companies that violate their national GAAP in such a manner that requires an outside auditor to issue anything other than an unqualified opinion. Eiwlee violated Thai GAAP in a manner that may have affected its financial performance, according to Eiwlee's auditor. This is not a harmless error, as the error affects retirement benefits, which is an element of the Department's SG&A and/or labor expenses.
- The Department should reject Eiwlee's financial statements because of evidence of a subsidy. Eiwlee received an export packing subsidy, a program on which the Department initiated in the investigation of certain hot-rolled steel flat products from Thailand.
- The Department should reject Eiwlee's financial statements because it is a producer of a wide variety of non-subject merchandise. In the original investigation, the Department rejected the proposition that wooden furniture producers are similar to wood flooring producers.
- The Department should calculate surrogate financial ratios based on Thai plywood producers (Neotech, Lampang Product Ordinary Partnership, and BNS Wood Industry Co. Ltd.).

- If the Department continues to use Eiwlee's financial statements it should revise the financial ratios to properly classify certain of Eiwlee's labor expenses.

Armstrong:

- Eiwlee's financial statements should be rejected because it is a significant producer of non-comparable wooden furniture. The Department established in the original investigation that the furniture production process differs substantially from the production process of wood flooring.
- In *Persulfates from PRC*,[88] the Department used the financial statements of a producer of comparable merchandise whose production experience more closely matched that of respondents, even though there were contemporaneous and complete financial statements from a producer of identical merchandise.
- The Department should instead use Neotech's financial statements because Neotech is a producer of comparable merchandise whose production process more closely matches the production experience of the respondents.

Baishan et al., and Alliance for Free Choice and Jobs in Flooring:

- Eiwlee is primarily a producer of furniture, a product that the Department has previously recognized as being vastly different from multilayered wood flooring.
- In the original investigation the Department found that wooden bedroom furniture did not meet the criteria for comparable merchandise, and using the same analysis the Department should find Eiwlee's financial statements unsuitable because they are neither reliable nor specific.
- Because Neotech is a producer of plywood (comparable merchandise), and its statements are contemporaneous with the POR and do not reflect subsidies, Neotech's financial statements are a more reasonable representation of the financial experience of wood flooring producers and should have been used as the basis of calculating surrogate financial ratios.
- If the Department continues to use Eiwlee's financial statements it should acknowledge that Eiwlee produces many products other than wood flooring and the surrogate financial ratios should be based on an average of Eiwlee and Neotech.

CAHP:

- The Department should continue to rely on Eiwlee's financial statements to calculate surrogate financial ratios. The auditor's qualified opinion in the 2013 statements is immaterial because the conditional opinion represented less than 1 percent of materials, labor, and energy, and there is no evidence of countervailable subsidies in Eiwlee's financial statements.
- Eiwlee manufactures and sells multilayered wood flooring that is identical to that produced and sold by the respondents.
- There is no information supporting the premise that wooden furniture and housewares dominate Eiwlee's production.

[88] *See Persulfates from PRC* and accompanying IDM at Comment 1.

- Where the Department has usable financial statements for a producer of identical merchandise, the Department disregards surrogate financial statements of producers of comparable merchandise.
- The financial statements for other Thai producers of comparable products are unusable.
- The Department should use the detailed breakout of Eiwlee's 2012 expenses as presented in the company's 2013 audited financial statements.
- If the Department determines that Eiwlee's 2013 financial statements are unusable because of the auditor's qualified opinion, the Department should rely on Eiwlee's 2012 financial statements.

Department's Position: In the *Preliminary Results*, the Department determined that the 2013 audited financial statements of Eiwlee were the best available information on the record to value factory overhead, SG&A expenses, and profit. For these final results, we have determined that the 2012 audited financial statements of Eiwlee are the best available information on the record because they are contemporaneous with the POR, complete and reliable, contain no evidence of countervailable subsidies, do not contain a qualified auditor opinion, and Eiwlee is the only surrogate producer of identical merchandise. However, we have relied on the 2012 figures presented in the 2013 statements in instances where these 2012 figures provide greater detail.

The statute directs the Department to base the valuation of the factors of production "on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . . ."[89] In evaluating financial statements for use in calculating the surrogate financial ratios, it is the Department's preference to match the surrogate companies' production experience with respondents' production experience, and whenever possible, surrogate country producers of identical merchandise provided that the SV data is not distorted or otherwise unreliable.[90]

In stating that Eiwlee was a producer of identical merchandise, the Department never stated that Eiwlee produced exclusively identical merchandise. Several of the comments from interested parties characterize Eiwlee as exclusively a furniture producer; others say it is a furniture producer that happens to produce some wood flooring. This description of Eiwlee's production activities ignores record evidence that indicates it is a significant producer of identical merchandise. For instance, the company profile on its web site describes Eiwlee as "one of Thailand's leading wood manufacturers and exporters of high quality wood flooring (engineered wood flooring, solid wood flooring, & wood deck), and woodenware/houseware/furniture."[91] The company's web site also states that Eiwlee "is committed to producing highest quality engineered hardwood flooring and woodenware in alignment with American and European standards."[92] Additionally, we note that one of Eiwlee's websites is www.asianfloor.com.[93] We find that this is relevant as this indicates that Eiwlee has sought to emphasize the wood flooring element of its manufacturing operations. Although Eiwlee produces merchandise other than wood flooring, the Department finds that the record does not support interested parties'

[89] *See* section 773(c)(1) of the Act.
[90] *See, e.g., Racks from the PRC* and accompanying IDM at Comment I.
[91] *See* CAHP's November 3, 2014 pre-preliminary comments, at Exhibit 3.
[92] *Id*.
[93] *Id.*

contentions that Eiwlee is a furniture company, or even a furniture company that happens to make wood flooring, in view of the way the company describes itself on the web site. Indeed, there is no record evidence that establishes the percentage of wood flooring Eiwlee produces as compared to any other products.

Dajen/Senmao argues that Eiwlee is a member of "The Thai Furniture Industries Association" and the "Thai Housewares Trade Association," but there is no evidence of membership in any association of flooring producers. However, this reasoning is misleading and irrelevant, as there has never been a requirement that a company must belong to any particular type of trade association in order to qualify as an appropriate surrogate producer. If Dajen/Senmao intended this argument to support its suggestion that Eiwlee is only a furniture producer, record information, as explained above, clearly shows Eiwlee is a significant producer of engineered wood flooring.

In addition, the Department does not agree with Dajen/Senmao's assertion that other potential surrogate producers (specifically listing BNS Wood Industry and Lampang Products Ordinary Partnership) produce merchandise "at least equally similar to MLWF" as the multiple products made by Eiwlee.[94] First, the Department calculated surrogate financial ratios based on Eiwlee's surrogate financial statements because Eiwlee produces merchandise identical to the subject merchandise of the respondents in this case. That it produces other products in addition to multilayered wood flooring does not diminish from the fact that Eiwlee produces identical merchandise. Therefore, because the record contains no evidence that any other potential surrogate company produces identical merchandise,[95] Dajen/Senmao is incorrect is claiming that any of the other potential surrogate companies produces merchandise "equally similar to MLWF."

While we agree with certain comments by interested parties that plywood is comparable merchandise, as explained above, the Department's preference is to calculate surrogate financial ratios based on producers of identical merchandise when such information is not distortive or otherwise unreliable.[96] The Department has, in past cases, used multiple financial statements from companies at various levels of integration to approximate the experience of respondents.[97] In this review, however, because Eiwlee is a producer of identical merchandise, we find that the respondents' production experience is closely matched by Eiwlee alone when compared with other surrogate producers on the record.

The Department also disagrees that its decision in *Persulfates from PRC* is instructive on this issue.   Armstrong argues that in *Persulfates from PRC*, the Department used the financial statements of a producer of comparable merchandise whose production experience more closely matched that of respondents, even though there were useable financial statements from a producer of identical merchandise. However, we note that in that case, the record reflected that

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[94] *See* Dajen/Senmao's case brief, at 5 note 1.
[95] BNS Wood Industry produces solid wood flooring, solid wood worktops and sawn timber, while Lampang Products produces reclaimed teak wood flooring. *See* Dajen/Senmao's August 11, 2014 surrogate value comments, at Exhibit 7.
[96] *See Racks from the PRC,* and accompanying IDM at Comment I.
[97] *See Wood Flooring AR1 Final* and accompanying IDM at Comment 2.

the producer of identical merchandise and the respondent used different production processes (*i.e.*, batch process vs continuous process), and the producers of comparable merchandise used the same process as the respondent (*i.e.*, continuous process). By contrast, in the instant review, the record contains no evidence of such significant differences in the production process between Eiwlee and the respondent. Thus, the Department has concluded that it is appropriate to not use financial statements from producers of comparable merchandise because their production experience is not as representative of that of the respondents as Eiwlee's financial statements.

For the *Preliminary Results*, the Department used the 2013 figures from Eiwlee's 2013 financial statements because it had more overlap with the POR than the 2012 financial statements from Eiwlee. When financial statements from multiple years for the same company are placed on the record, the Department has a preference to use the financial statements with the most overlap with the POR.[98] Subsequent to the publication of the *Preliminary Results*, however, the Department has determined that Eiwlee's 2013 financial statements are not the best available information from which to calculate financial ratios because the auditor issued a qualified opinion regarding the estimate employee retirement benefit obligations, and this opinion is related to wages and salaries which affect certain elements of our financial ratio calculations. For this reason, and because Eiwlee's 2012 financial statements do not contain a qualified opinion, the Department has used Eiwlee's 2012 financial statements for these final results.[99]

In its rebuttal brief, CAHP argues that if the Department decides not to rely on the 2013 Eiwlee financial statements, the Department should use instead the 2012 income statement figures as they are presented in the 2013 financial statements for purposes of calculating the financial ratios. Eiwlee's 2013 financial statements go into greater detail than the 2012 financial statements regarding material costs, and CAHP states that the Department should therefore use the 2012 figures as they are reported in the 2013 financial statements, and segregate expenses appropriately.[100] We agree with CAHP in part, and have relied on certain 2012 figures reported in the 2013 statements in instances where the 2012 figures offer greater detail when compared to the 2012 figures in the 2012 statements. Specifically, we have used the detailed breakout of the 2012 cost of sales, which includes material costs and overhead expenses, from the 2013 statements.

We have based our decision on several considerations. We first note that the qualified opinion in the 2013 statements relates only to the amounts for the period ending December 31, 2013. Specifically, the auditor's report in the 2013 statements states the following: "However, the Company neither provided nor recorded estimate employee retirement benefit obligations in accordance with such reporting standard in their financial statements for the year ended 31 December 2013. As a result, I was not satisfied with the audit evidence regarding the estimate employee retirement benefit for the year ended 31 December 2013 because I did not receive documents and relevant information for the audit of such estimate from the Company."[101]

[98] *Id.*
[99] *See* Final SV Memo.
[100] *See* CAHP's November 3, 2014 pre-preliminary comments, at Exhibits 1 ("Eiwlee 2013 Statements") and 2 ("Eiwlee 2012 Statements").
[101] *See* Eiwlee 2013 Statements.

Therefore, we find that the auditor's report does not provide an opinion on the amounts for the year ending December 31, 2012 (*i.e.*, the 2012 figures) in the 2013 statements.

Second, we note that the 2012 statements were audited and received no qualified opinions, hence the reason why we have used the 2012 statements in these final results. We reviewed the income statements in both the 2012 and 2013 statements, and found that the total 2012 cost of sales figures reflected in both income statements are identical.[102] We also found that the 2013 statements presented more detailed schedules for 2012 relating to the "cost of sale" line item in the income statement. Because the total "cost of sale" amounts for 2012 are identical in both the 2012 and 2013 income statements, and because more detailed information regarding this line item is available on the record, we have relied on the 2012 figures presented in the 2013 statements relating to this total "cost of sale" line item in the calculation of surrogate financial ratios.

We note that the totals for certain sub-categories within the total cost of sale line item are slightly different in the 2012 and 2013 statements. Specifically, the 2012 manufacturing expenses/overhead amounts are different in the 2012 and 2013 statements. Additionally, the 2012 material costs are different in the 2012 and 2013 statements. However, we find these differences in the two statements negligible. More importantly, we note that the total cost of sales amounts in both statements are the same. Furthermore, as CAHP remarked, the Department has in the past relied on secondary financial statements in instances where the record contained more detailed information regarding elements of the Department's surrogate financial ratio calculations that led to a more accurate calculation.[103] Similarly, in this review, we are relying on the surrogate producer's financial statement from the subsequent year.

Fine Furniture argues in its case brief that the Department should not use Eiwlee's 2012 or 2013 financial statements because there is evidence of a government-provided subsidy (*i.e.*, export packing credits). While Fine Furniture is correct that the Department has previously found export packing credits to be a countervailable subsidy, and that the Department prefers to use financial statements without evidence of a countervailable subsidy,[104] it is not clear from record evidence that the packing credits in question are export packing credits. Although Fine Furniture states in its case brief that Eiwlee benefitted from government-provided export packing credits, Eiwlee's financial statements only contain an item for "packing credit."[105] Because the statements do not explicitly state that the packing credits are export packing credits specifically, the Department cannot conclude that Eiwlee benefitted from a government-provided countervailable subsidy.

Lastly, we disagree with Fine Furniture that SG&A labor line items in Eiwlee's financial statements should be treated as manufacturing labor, rather than SG&A labor. In *Labor Methodologies*, the Department addressed concerns of double-counting labor costs when it stated that it would adjust "the surrogate financial ratios when the available record information—in the

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[102] *See* Eiwlee 2012 Statements and Eiwlee 2013 Statements.
[103] *See Carbon Steel Flat Products from Romania* and accompanying IDM at Comment 19; *see also Steel Plate from Romania* and accompanying IDM at Comment 10.
[104] *See*, *e.g.*, *Tetrafluroethane from the PRC* and accompanying IDM at Comment 16.
[105] *See* Eiwlee 2012 Statements at note 7 and Eiwlee 2013 Statements at note 7.

form of itemized indirect labor costs—demonstrates that labor costs are overstated."[106] Given the nature of the information that serves as the source for financial ratio calculations in NME cases (*i.e.*, surrogate financial data from a company that is not a party to this proceeding), we cannot "go behind" a surrogate financial statement to determine precisely what each item includes or to what activity it relates. Therefore, when assigning the various line items to particular categories for our financial ratio calculations, we prefer to rely on the classification of these items from the surrogate financial statement, unless there is good reason to believe the classification is not accurate.[107] Accordingly, it is the Department's practice to treat labor in its financial ratio calculations in the same manner the surrogate company disaggregates its labor costs.

In reviewing the selected labor data source, the 2007 Industrial Census data published by Thailand's National Statistics Office ("2007 NSO data"), the Department finds that the 2007 NSO data only include the data line items for "manufacturing" and do not include data from the "administrative and support activities" line items.[108] Therefore, the Department finds that the 2007 NSO data do not include SG&A labor and thus SG&A labor should be treated as an SG&A expenses in the surrogate financial ratios. Accordingly, the Department will only treat the total value of "Salary, labour and overtime" listed in the "Cost of manufacturing" section of Eiwlee's 2013 financial statements as direct labor because these expenses are related to personnel employed in manufacturing product.[109] As explained above, we have used the detailed breakout of the 2012 cost of sales from the 2013 statements; the breakout of the 2012 cost of sales includes a line item for "Salary, labour and overtime". The Department has treated labor-related expenses that relate to administrative and sales personnel in Eiwlee's 2012 financial statements as an SG&A expense.

Comment 8: Wood Input Conversion Factors

CAHP:

- Senmao's wood inputs include an array of different species as well as HDF, MDF, and plywood.[110] The densities of each of these inputs varies significantly and therefore, the single average that the Department used in the *Preliminary Results* is not an accurate method of converting from Kg to M3 in this proceeding.
- The Department should use the species specific conversion factors placed on the record for Fine Furniture because they are the most specific for each input and are more consistent with Senmao's finished product weights than the more generic conversion factors submitted by CAHP.

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106 *See Labor Methodologies*, 76 FR at 36094.
107 *See Polyester Staple Fiber from the PRC* and accompanying IDM at Comment 1.
108 *See* Memorandum to The File, through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, Enforcement and Compliance, from Charles Riggle, Senior International Trade Compliance Analyst, AD/CVD Operations, Office IV, Enforcement and Compliance, regarding "Preliminary Results of the Second Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Surrogate Value Memorandum" (December 31, 2014), at Exhibit II.
109 *See* Eiwlee 2012 Statements.
110 *See* Preliminary Results Disclosure Release on January 8, 2015: Prelim SVs Jiangsu Excel Data File, Document Number 3251340-01 ("Senmao SV worksheet").

Dajen/Senmao:

- The Department used a single density to convert all wood values reported in Kg to M3 in the *Preliminary Results*. There was no citation to the record source for this conversion factor and regardless of its origin should not be used when there are better, species-specific conversion data on the record.
- The Department should use the conversion factors submitted by CAHP because they are species-specific and neither Senmao nor Dajen has objected to their use as the most accurate information available on the record.

CAHP (rebuttal):

- For the final results, the Department should use Fine Furniture's more specific and accurate wood density conversion factors instead of the 770 Kg/M3 average used in the preliminary results.[111]
- CAHP agrees with the respondents that wood density conversion factors need to be corrected for the final. However, CAHP believes that there is additional information available on the record. Fine Furniture submitted species specific wood density conversion factors that are more accurate in terms of weight and species than the respondent's requested "Attachment 11" from CAHP's August 25 rebuttal comments.[112]

Dajen/Senmao (rebuttal):

- Although CAHP asserts that the Department should rely on Fine Furniture's submitted conversion factors, the best conversion factors are those submitted by CAHP itself and previously recommended to the Department. Those factors are a far better match for the Thai import data because they represent a broad market average rather than an isolated company conversion and are least likely to be distortive.
- Use of sales data and CAHP's total net weight calculation methodology is distortive. FOPs were calculated based on total production of a company, not just sales to the United States and net total comparisons provide no indication that one set of conversions is better or worse than another.[113]

Fine Furniture (rebuttal):

- The Department should continue to use the average wood input conversion factor used in the *Preliminary Results* and should not use Fine Furniture's company-specific factors. Those company-specific factors were not intended to be used as a broad market average, but for Fine Furniture's specific rate as a voluntary respondent.

Department's Position: In the *Preliminary Results*, the Department used a single density to convert all wood values reported on a kilogram basis to a cubic meter basis. The Department treated this ratio as an average density for all wood inputs used by Dajen and Senmao. The

[111] *See* Pages 9-11 and Exhibits 1-2 of the CAHP Case Brief February 9, 2015.

[112] *See* Exhibit 2 of CAHP Case Brief. According to CAHP, this exhibit demonstrated that Fine Furniture's wood density conversion factors were more accurate for Senmao than the generic wood density conversion factors submitted by CAHP. CAHP states that this same analysis could not be done for Dajen because Dajen did not provide the net weight or gross weight of its individual U.S. sales and thus CONNUM specific weight per square meter could not be derived.

[113] *See* Senmao Rebuttal Brief at 10-11 and Exhibit 1.

Department agrees with both CAHP and Dajen/Senmao that there is more specific information available on the record and that such information should be used for the final results of this review. Specifically, the Department agrees with Dajen/Senmao that the specific general conversion factors that CAHP placed on the record are the most accurate for this proceeding. Not only did CAHP provide this information, and Senmao and Dajen agree that it most accurately represented the densities of their inputs, but the alternative information in Fine Furniture's response is not properly considered in this review because the Department has not selected Fine Furniture as a voluntary respondent. In this regard, the Department cannot be assured of the accuracy and veracity of Fine Furniture's conversion factors. Because the Department has determined Fine Furniture's conversion factors not to be the best available information for use in this review, CAHP's "Net Weight" calculation methodology argument is rendered moot. For the foregoing reasons, the Department will use wood density conversion factors submitted by CAHP to convert Senmao's and Dajen's wood inputs and density SVs in the final results of this review.[114]

Comment 9: Truck Freight and Handling Surrogate Values

CAHP:

- In the Preliminary Results, the Department stated that it calculated a surrogate inland freight rate of 0.0002722 U.S. dollars per-kg/per-km based, in part, on the average distance from Bangkok to the two major ports in Thailand (110 km and 44.33 km). However, in its calculation of the SV for truck freight, the Department incorrectly used a distance of 120 km. This error resulted in the SV being understated. Therefore, the Department should correct the surrogate inland freight rate to 0.0002722 for the final results.

Dajen/Senmao:

- Senmao states that, in the Preliminary Results, the Department relied upon the World Bank's publication Doing Business 2014 Economy Profile: Thailand – Trading Across Borders ("Doing Business") to calculate the inland freight SV. Senmao notes that Doing Business uses several assumptions to make the data comparable across economies – that goods are shipped in a 10 MT 20-foot full container load and that this container load is valued at US $20,000.
- Senmao alleges that, in the Preliminary Results, the Department only took into account the 10 MT weight assumptions and failed to address the assumption that the 10 MT must also be valued at US $20,000. Senmao argues that both assumptions must be taken into account in the Department's calculation of the truck freight and handling SVs.
- Senmao argues that record evidence demonstrates that it shipped in larger quantities than 10 MT. Furthermore, Senmao argues that if the 10 MT assumption is applied to its shipments, the vast majority of the shipments do not reach the $20,000 threshold required by Doing Business.
- Senmao asserts that the Department should adjust the quantity in the container to account for the $20,000 assumption required by Doing Business.

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[114] *See* Final SV Memo.

- Senmao also argues that there is no record evidence that the km distances used by the Department to calculate these SV are representative distances surveyed by Doing Business. The Department failed to explain how the distance it used in the calculation ties to the Doing Business information or how the distance is representative of the business that provided the transportation costs to Doing Business.
- Senmao notes that the Doing Business inland freight expense includes a handling portion. Senmao contends that the handling portion includes the loading and unloading of goods at the warehouse and seaport.
- Senmao argues that the Department's calculation essentially counts the handling expense multiple times.
- Specifically, Senmao argues that the handling of the freight does not vary by distance traveled even though, in the calculation, the Department treated the handling element as if it varied by distance traveled.
- Senmao proposes using a flat fee to calculate handling to neutralize the overstatement of the handling expense resulting from tying the expense to the distance traveled. Senmao argues that the freight and handling expenses from Doing Business are not tied to any specific distance and that the Department has created a fictitious value by tying this expense to a distance, *e.g.*, distance to the ports.

CAHP (rebuttal):

- CAHP argues that the Department addressed and dismissed the arguments put forth by Senmao in *Monosodium Glutamate from China*.
- For the final results, the Department should continue to calculate the SV for domestic inland freight consistent with its past precedent and corrected for the ministerial error noted by CAHP in its Case Brief.

Department's Position: First, we agree with CAHP that the Department made a clerical error regarding the distance used to calculate the SVs for truck freight and B&H. We mistakenly used 120 Kms when, as explained in our preliminary decision memorandum, we intended to use the average distance from Bangkok to the two major ports in Thailand.[115] We will correct this clerical error for the final results.

Second, we disagree with Dajen/Senmao that the Department must adjust the Doing Business assumptions when calculating inland freight and handling expenses. The Department's practice of not adjusting the weight of the container used by Doing Business is reflected in many previous determinations.[116] The Department disagrees that the denominator for the SV should be based on the experience of the respondents because this 10 MT weight is integral to the methodology used by Doing Business in calculating the freight cost.[117] The cost of the shipments obtained by Doing Business reflects the cost of a 10 MT container. The Department finds that changing only the weight of the container in the calculation of a SV results in a meaningless unit value.[118] The Department has noted in past proceedings that mixing different sources of data within the ratio

[115] *See Prelim Decision Memo.*
[116] *See Steel Threaded Rod from China 2011-2012* and accompanying IDM at Comment 6; *see also Nails Final Results* and accompanying IDM at Comment 3.R.
[117] *See Monosodium Glutamate* and accompanying IDM at Comment 1.
[118] *Id.*

calculation would add inconsistency to the calculation, which would yield a distorted result.[119] The Department also disagrees with Senmao that because Senmao's 10 MT shipments do not reach US$20,000, the resulting SV of inland freight is distortive. The shipment value of one container of goods is a key assumption in the Doing Business data.[120] Doing Business's broad-market survey is based on numerous observations of varying container shipments.[121]

Furthermore, the Department disagrees that the distances used in the calculation of these SVs are not representative of the study done by Doing Business. One of the assumptions in the Doing Business survey is that the company is located in the periurban area of the economy's largest business city (*i.e.*, Bangkok Industrial Area). Specifically, in its section "What do the indicators cover?" Doing Business states that the business is located in "a periurban commercial zone."[122] While Doing Business does not specify which major port(s) in Thailand serves as the basis for its reporting rates, as we noted in our *Preliminary Results*, in *Prestressed Concrete* and other proceedings, the Department determined that there are two major ports in Thailand (Port of Bangkok (44.33 km from port to Bangkok Industrial Area); and Laem Chabang Port (110 km from port to Bangkok Industrial Area)). In these other proceedings, we determined that it was reasonable to base our calculations on an average of those two distances.[123] The Department finds that the distances it used to calculate the SVs are consistent with the methodology employed by Doing Business in constructing its indicators given that the distances are calculated from a periurban area to Thailand's two major ports.[124]

We disagree with Dajen/Senmao that the Department should use a flat fee to calculate freight and handling expenses without tying the calculation to a specific distance. By tying the freight and handling expense fees reported in Doing Business to specific distances, the Department is calculating an expense that is more reflective of the Doing Business study than a general flat fee. Specifically, the distances used by the Department in the calculation are the distances from the periurban area to the largest port. As explained above, the use of these distances is consistent with the methodology employed by Doing Business in constructing its indicators.[125] Therefore, as we have done in other proceedings, we will continue to calculate inland freight and handling expenses by tying the calculation to specific distances.[126]

The Department also disagrees with Dajen/Senmao's argument that the freight calculation counts the handling portion of the expense multiple times. The per unit surrogate freight value is calculated based on the average distance between the periurban areas and the port of export. As noted by the Department in another proceeding, the calculation includes a single "loading and

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[119] *See Monosodium Glutamate* and accompanying IDM at Comment 1; *see also Steel Rod* and accompanying IDM at Comment 6*; see also Steel Nails* and accompanying IDM at Comment 3.R.
[120] *Id*.
[121] *Id*.
[122] *See* Surrogate Value Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China (December 31, 2014) at Attachment V, p. 72 ("Prelim SV Memo").
[123] *See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying IDM at Comment 4 ("*Prestressed Concrete*").
[124] *See Monosodium Glutamate* and accompanying IDM at Comment 1.
[125] *Id*.
[126] *Id*.

unloading" cost distributed to the average distance on a per unit basis.[127] We do not find that this leads to a multiple counting of the handling cost, and Dajen/Senmao has cited no record evidence to establish its assertion.[128] Nonetheless, even if we were amenable to considering alternative valuation approaches, we would be unable to adjust the calculation because the Doing Business data provides a single figure for "Inland transportation and handling."[129] Dajen/Senmao has presented no information as to how to separate the cost associated with handling of the freight cost from the inland transportation portion of the freight cost, and the Department does not find any reasoned basis upon which to do so.

Comment 10: Electricity

Fine Furniture:

- In the preliminary results, Fine Furniture states the Department provided two different SVs for electricity - 3.7 THB/KWH and 197 THB/KW. Fine Furniture believes the Department intended to use the 3.7 SV rate and asks the Department to clarify its intended electricity surrogate for the final results.
- Assuming 3.7 was the intended SV, Fine Furniture argues that the Department should revise this rate in the final results because it only represents the "time of use tariff table" rates, and therefore does not represent a broad market average. Fine Furniture notes that there are two tariff tables included within the electricity valuation source used in the Preliminary Results—one "time of use" tariff table and another "time of day" tariff table. Fine Furniture argues that the Department should average "the time of use" tariff table with rates from "the time of day" tariff table because there is nothing to indicate that the respondents fall into one category over the other; thus, an average is most appropriate.

CAHP:

- CAHP agrees that the Department intended to use the 3.7 TBH/KWH rate as the SV for electricity, but does not agree that the Department should make any changes to its valuation.
- CAHP argues that there is no support for Fine Furniture's claim that the "time of use" tariff table does not represent a broad market average.
- CAHP argues that Fine Furniture provides no evidence that combining data from the "time of use" tariff table and the "Monthly Tariff" table leads to a more accurate valuation of electricity.

Department Position: First, we agree with both parties that the Department intended to use 3.7 THB/KWH as the SV for electricity. We note that we calculated 3.7 THB/KWH as the SV for electricity in the SV memorandum.[130] However, the Department mistakenly reported 197 THB/KW as the SV for electricity in a spreadsheet released with the *Preliminary Results*.

[127] *Id*.
[128] *Id*.
[129] Prelim SV Memo, at Attachment V, p. 78.
[130] *See* Prelim SV Memo at 4 and Exhibit 6.

The record contains information from the "Metropolitan Electricity Authority, Schedule 3: Medium General Service," regarding electricity rates in Thailand.[131] Schedule 3 provides two tables, "3.1 Normal tariff" and "3.2 Time of use tariff."[132] For the *Preliminary Results*, the Department calculated the SV for electricity based upon information contained in the "energy charge" column of table "3.2 Time of use tariff." However, we agree that there is no information in Schedule 3 to discern why data from the energy charge column of table 3.2 is more applicable to the respondents than data from the energy charge column of table 3.1. Therefore, because both table 3.1 and table 3.2 contain information related to energy use, and the record contains no information to explain why one table is more or less appropriate for SV purposes than the other, we find that an average of the data from the energy charge columns of tables 3.1 and 3.2 represents the best available information for valuing electricity for the final results.[133]

Senmao Specific Issues:

Comment 11: Plywood

A: AFA/PAFA
B: Simple Average AUV
C: Exclude Aberrational Imports from Taiwan and the United States
D: Surrogate Value

CAHP:

- The respondent, Senmao, failed to provide sufficiently detailed information about its plywood inputs to the Department on multiple occasions. This should be taken as a refusal to cooperate with the Department and PAFA (or at a minimum FA) should be applied to its plywood inputs.
- Plywood is a major component of Senmao's total cost of manufacturing.[134] In response to the Department's request that Senmao "describe in detail the composition of each of {Senmao's} core materials," Senmao described its plywood input with only a range of thicknesses.[135] At a minimum, to determine the appropriate HTS category to use when valuing plywood, it should have provided: (1) the upper end of the thickness range of each ply (*i.e.*, less than 6 mm or greater than or equal to 6 mm) and (2) the species of the outer plies (*i.e.*, tropical wood specified in Subheading 2, non-coniferous, or other).
- Senmao's suggested HTS 4412.99.00-090 infers that its plywood consists of at least one ply 6 mm or more. This information is inconsistent with its sales information, which identifies a range of thickness for Senmao's plywood, and the number of plies in the plywood. This information suggests a ply of 6mm or more is a near impossibility.[136]

[131] *See* Multilayered Wood Flooring from the People's Republic of China: Surrogate Value Comments, Exhibit 4, dated August 11, 2014.
[132] *Id*. Though Fine Furniture refers to a "time of day" tariff, the Department notes that there is no "time of day" tariff table in the only version of Schedule 3 that appears on the record.
[133] *See* Final SV Memo.
[134] *See* Senmao's Section C & D Response (June 30, 2014) at Exhibit D-10 Part 2 (wherein Senmao reported total plywood consumption costs and total cost of manufacturing during the POR).
[135] *Id.* at Exhibit D-3.
[136] *Id.*; *see also* Senmao's Supplemental Section A, C & D Response (September 29, 2014) at Exhibit SC-3.

- In light of this inconsistency, the Department valued plywood using Thai HTS 4412.32.00-0000. The proper classification of Senmao's plywood would appear to be either Thai HTS 4412.31.00-000 or 4412.32.00-0000.
- As PAFA, the Department should assign the higher of the AUVs for Thai HTS 4412.31.00-000 and Thai HTS 4412.32.00-000 which would be 585.55 USD/M3.[137]
- If the Department does not assign PAFA to the valuation of Senmao's plywood, the Department should use the simple average of Thai HTS 4412.31.00-000 and Thai HTS 4412.32.00-000 as the best facts available.
- The best available information for valuing both respondents' plywood comes from the Philippines. Specifically, in the original investigation and the first administrative review of this order, the Department valued respondents' plywood inputs based on domestic plywood prices published in the PFS.
- In this review, the Department should again use the PFS because Thai HTS 4412.32.00-000 is not specific to plywood thickness and the Thai import AUV of 97 USD/M3 is aberrationally low relative to other benchmark prices.[138]
- If the Department continues to use Thai HTS 4412.32.00-000 to value respondents' plywood, it should exclude aberrational imports from Taiwan and the United States, which are extremely low compared to imports from other countries into Thailand, other potential surrogate countries, and the Philippine data used in the investigation and first administrative review. .

Dajen/Senmao:

- There is no basis for the Department to use any form of AFA regarding the plywood FOP because Senmao has been fully cooperative and timely with the Department after having been chosen as a respondent late in the POR. The Department has not informed Senmao to the contrary or indicated that its answers have been deficient. Furthermore, record evidence is sufficiently clear indicating the correct factors for Senmao's inputs.
- CAHP claims that multiple attempts were made by the Department to obtain and clarify Senmao's SV information for plywood. However, Senmao only received one supplemental questionnaire and at no point after its timely submission did the Department indicate that it was in any way deficient as would be required by section 782(d) of the Act if any form of AFA is to be used.
- There is sufficient information available on the record to value Senmao's plywood without resorting to secondary information.
- There is no rationale for simple averaging Thai HTS 4412.31.00-000 and Thai HTS 4412.32.00-000 because Senmao's suggestion of 4412.99.00-090 indicated clearly a lack of tropical wood layers in its plywood. As such, it would be inappropriate to include the values from HTS 4412.31.00-000, as that HTS number refers to plywood with at least one ply of tropical wood.
- The Department should continue to use HTS 4412.32.00-000 to value Senmao's plywood.[139]

[137] Senmao's Surrogate Value Comments (August 11, 2014) at Exhibit 1.
[138] *See* CAHP case brief of February 9, 2015 at 12-13.
[139] Senmao notes that it inadvertently recommended HTS 4412.99.00-090 for valuation of its input, as it mistakenly read the reference as referring to total thickness (as opposed to the thickness of an individual ply).

- There is no basis for using the Philippine domestic plywood prices because the Philippines is not economically comparable to PRC and is not an eligible source of SV data.
- Overall AUVs for HTS 4412.32.00-000 for similar prior periods are in a similar range as the current POR. Additionally, CAHP's analysis ignores that the remaining potential surrogate countries had imports of small quantities not significant enough to represent respondents' consumption during the POR. In fact, data proposed by CAHP for comparison purposes would be rejected as unusable because they are aberrational in their own right. In no single month in the comparison countries were the imports higher than the imports from Taiwan. If the Department were to find Thai data aberrational, it would not exclude the imports from Taiwan and the United States, but would instead use Thai data for the HTS category from the prior POR and inflate the value.

Fine Furniture:

- The Department should not apply PAFA or FA in valuing Senmao's plywood inputs because (1) the record conclusively shows that Senmao cooperated fully in responding to the Department's requests for information; and (2) Senmao has conclusively demonstrated in those responses that CAHP's proposed averaging methodology is not reflective of Senmao's economic reality.
- Senmao was compliant in answering the questions posed by the Department and the Department accepted Senmao's answers because it did not ask additional questions with additional supplemental questionnaires. Conversely, Dalian Dajen was given four supplemental questionnaires. To apply PAFA in these final results would, therefore, be fundamentally unfair and contrary to section 782(d) of the Act.
- CAHP argues that some form of PAFA or FA should be used in valuing Senmao's plywood because Senmao did not provide sufficient information to allow the Department to choose the best Thai HTS number. CAHP argues for a combination of Thai HS 4412.32.00.000 and 4412.31.00.000. However in its pre-prelim comments, Senmao clearly states that its plywood does not contain any tropical wood veneers.[140] Therefore, Thai HTS 4412.31.00.000 cannot be applied to Senmao's plywood, leaving only Thai HTS 4412.32.00.000.
- Philippines Forestry Statistics are inferior to Thai import data because they are not from the primary surrogate country and CAHP itself challenged the validity of the PFS source in the original investigation of this case. If there are flaws in both sets of data it is the Departments practice to use data from the primary surrogate country.
- CAHP provides no evidence to suggest that the imports from Taiwan and the United States into Thailand are flawed. They are simply cherry picking the low values. This is not a reason for the Department to exclude import data from the calculation of AUVs.

Department's Position: The Department reviews SVs information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[141] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-

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[140] *See* Senmao's Pre-Preliminary Comments and Additional Factual Information at 5 (December 1, 2014).
[141] *See Lightweight Thermal Paper* and accompanying IDM at Comment 9.

exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[142] As established in the *Preliminary Results*, the Department continues to find that Thai HTS 4412.32.00-000 import data obtained from GTA are publicly available, broad market averages, contemporaneous with the POR, tax-exclusive, and specific to the input in question, satisfying the critical elements of the Department's SV criteria.

A: Regarding use of PAFA/FA for plywood valuation:

The Department is not applying PAFA/FA to value Senmao's plywood. Initially, because Senmao responded to the Department's questions, the Department does not find that Senmao failed to cooperate in responding to our requests. As such, the Department would not find use of an adverse inference under 776(b) of the Act to be appropriate even if necessary information were missing from the record. In any event, as discussed further below, though the description provided by Senmao is not as specific as it could have been,[143] the Department finds that Senmao provided the necessary information to value its plywood inputs, and thus resorting to FA under section 776(a) is not needed.

B: Regarding CAHP's proposal that "If the Department does not assign PAFA to the valuation of Senmao's plywood, the Department should use the simple average of Thai HTS 4412.31.00-000 and Thai HTS 4412.32.00-000 as the best facts available."

As noted above, we do not find that use of FA is warranted in this case. Further, the Department disagrees that CAHP's proposed averaging methodology represents the best available information to value plywood because Senmao submitted information on the record indicating that Senmao's plywood inputs contained no tropical wood veneers.

Specifically, in response to the Department's request that Senmao describe the composition of its plywood and provide a suggested HTS number for purposes of selecting a surrogate value, Senmao stated that "'Plywood' refers to a wood panel composed of an assembly of two or more layers or plies of wood veneers under HTS number 4412.99.00.090."[144] Senmao admits that the suggested HTS number was incorrect insofar as it was based on a misreading of the thickness description in that HTS number[145], however, the wood described in that HTS number is wood *other than* plywood "{w}ith at least one outer ply of tropical wood."[146] This suggests that Senmao's plywood inputs did not contain tropical wood, which Senmao expressly stated in its pre-preliminary comments.[147]

Therefore, the Department does not find that Thai HTS 4412.31.00-000, which is specific to plywood with at least one outer ply of tropical wood, is the best available information for valuing Senmao's input either individually or in tandem by averaging with Thai HTS 4412.32.00-000.

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[142] *See*, *e.g.*, *TRBs* and accompanying IDM at Comment 6.
[143] The Department intends to consider in any subsequent administrative review of this order whether it should gather more specific information to value plywood inputs.
[144] *See* Senmao's September 29, 2014 Section A,C, and D Supplemental Questionnaire response at 5-6.
[145] *See* Dajen/Senmao rebuttal briefs of February 18, 2015 at 5
[146] *See* CAHP's August 25, 2014 rebuttal comments at Exhibit 1.
[147] *See* Senmao Pre-Prelim comments, dated December 1, 2014, at 5.

By contrast, Thai HTS 4412.32.00-000 is specific to Senmao's plywood because it does not include tropical wood and is consistent with sales documentation provided by Senmao, which suggests that Senmao used non-coniferous plywood.[148] Accordingly, the Department will continue to use Thai HTS 4412.32.00-000 alone to value Senmao's plywood as it is the most accurate based on Senmao's description of its plywood inputs as non-coniferous without any tropical wood veneers.

C: Regarding CAHP's comment that "The best information available to value respondent's plywood FOPs are Philippine domestic plywood prices."

Though CAHP suggests that we should use Philippine domestic plywood prices to value Senmao's plywood, the Department has determined that the Philippines is "not as comparable to the PRC's GNI as the other countries identified on the list distributed by the Office of Policy," including Thailand.[149] The statute requires that we use "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are-(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise."[150] In this case, the Department selected Thailand as the primary surrogate country because it found that Thailand was at a level of economic development comparable with the PRC (and indeed a level of economic development more comparable to the PRC than the Philippines), was a significant producer of comparable merchandise, and had the best available SV information. Pursuant to 19 CFR 351.408(c)(2), the Department will normally value all FOPs in the primary surrogate country, which in this review was Thailand.

CAHP argues that similar to the investigation and first review of multilayered wood flooring from the PRC, domestic plywood prices published in the PFS should be used in place of the Thai HTS because the PFS prices are based on the thickness of the plywood and the Thai HTS is not. The Department disagrees with CAHP because the Philippines was neither selected as the primary surrogate country in this review, nor was it on the list of potential surrogate countries that the Department placed on the record early in this review. As such, we consider it to be at a less comparable level of economic development than Thailand, and the data from that country to be less reliable for surrogate valuation purposes. Furthermore, using data from the Philippines would require that we depart from our regulatory preference under 19 CFR 351.408(c)(2) to value all FOPs in the primary surrogate country. Because Thailand is the primary surrogate country in this review, and we have reliable SV data from the primary surrogate country that satisfies the breadth of our SV selection criteria, the Department will continue to value plywood FOPs with the GTA data for Thai HTS 4412.32.00-000 in these final results.

D: Regarding "If the Department continues to use Thai HTS 4412.32.00-000 to value respondent's plywood, it should exclude aberrational imports from Taiwan and the United States."

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[148] *See* Senmao's Section A response (June 12, 2014) at Exhibit A-5.
[149] *See* Second Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Selection of a Surrogate Country, dated December 31, 2014 ("SC Memo") at 6.
[150] *See* SC Memo at 4 (quoting 19 U.S.C. § 1677b(c)(4)).

CAHP argues that the imports to Thailand from Taiwan and the United States should be considered aberrational and excluded from any calculation of AUV when valuing Senmao's plywood. According to CAHP, U.S. and Taiwan imports to Thailand are aberrationally low and bring down the AUV of plywood to less than one third of the AUV used in the investigation and first review of this proceeding. As support for its argument that the AUVs for the U.S. and Taiwan are aberrantly low, CAHP provides several exhibits in its case briefs comparing the AUVs of other economically-comparable countries in this review as well as those of the Philippines in the investigation and first administrative review.[151] Aside from noting that the values appear low compared to the benchmarks cited by CAHP, CAHP has not identified any specific issues with the United States and Taiwanese data that render them unreliable.

When determining whether data are aberrational, the Department has found that evidence of a high or low AUV does not necessarily establish that GTA data for the suspect countries are unreliable, distorted or misrepresentative. Rather, interested parties must provide specific evidence showing whether the value is aberrational. In analyzing whether a given value is aberrational or distortive, the Department typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review from the POR and prior years.[152] Further, we note that the relevant test is to determine whether the AUV in the aggregate is aberrational.[153] Otherwise, parties would advocate the manipulation of data by removing one or more line items they find objectionable, with the result that we would not be using the average prices for that category, but some subset thereof. Where a party is able to demonstrate that the AUV for an entire category is aberrational or otherwise unreliable, the Department will reject that particular category and use another SV.[154]

In this case, CAHP has not shown that record evidence supports its conclusion that the Thai AUV for HTS category 4412.32.00-000 is aberrational. The average import value into Thailand is not aberrational compared with preceding years in Thailand, which is the designated surrogate country and has been determined by the Department to be economically comparable to the PRC in the investigation and first administrative review, and should be the first comparison for benchmarking.[155] The Thai historical AUVs of $34.80 in 2010-2011 and $135.11 in 2011-2012 show that the current $96.53 is not aberrational for Thailand.[156] CAHP's analysis of purported aberrations in the GTA import data for Thailand omits reference to Thailand's historical AUVs.

Regarding the GTA data from other potential surrogate countries, the Department compared the values and determined the Thai value to be at the low end of a broad range of values.[157] This

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[151] *See* CAHP's Case Brief dated February 9, 2015 at exhibits 4-8.
[152] *See Steel Threaded Rod from China 2011-2013* and accompanying IDM at Comment 2.
[153] *See, e.g., Hot Rolled Carbon Steel Romania*, and accompanying IDM at Comment 2, where the Department explained that to test the reliability of surrogate values alleged to be aberrational, it is appropriate to compare the selected surrogate value to the AUVs calculated for the same period using data from the other designated surrogate countries.
[154] *See, e.g., id.*; *see also Steel Plate from Romania* and accompanying IDM at Comment 11.
[155] *See* Dajen and Senmao's rebuttal brief at 16.
[156] *See* Dajen/Senmao August 11, 2014 Surrogate Data Submission.
[157] *See* CAHP's Case Brief dated February 9, 2015 at exhibits 4 and 5, which includes relevant import data for all potential surrogate countries.

alone is not a valid basis for rejecting the Thai data.[158] Indeed, the CIT has affirmed the use of an SV/AUV that is the lowest value on the record where it is not an outlier, but simply the low end of a range, as is the case here.[159] Additionally, the quantity of imports to Thailand (27,746 M3) was 3.5 times greater than the imports to the next largest importer Bulgaria (7,942 M3) and 63 times greater than the smallest importer Indonesia (439M3) on the surrogate country list. The scale of Thailand's imports suggest that Thailand's AUV cannot be considered an unrepresentative outlier when it reflects a much larger quantity of imports than the figures presented from other surrogate countries.

When looking specifically at Thai imports from Taiwan and the United States, we note that while Taiwan's imports only entered Thailand during four months of the year, they were equally spaced entries throughout the year that are comprised of fully 74.5 percent of all imports to Thailand under HTS 4412.32.00-000 during the POR.[160] We find that imports from Taiwan and the United States represent the vast majority of imports into Thailand (77.1%) and, therefore, are a true representation of market-driven prices. Again, while these Taiwan and U.S.-specific AUVs may be on the low end of the range when compared to other countries represented in the Thai HTS data (ranging from Taiwan $13 to Finland $1250), that alone does not mean they are aberrational. We also considered the other countries represented in the Thai data, and we note that while Malaysia's imports entered more frequently, they also only comprised 22.3 percent of total imports. We do not find that CAHP demonstrated that the entire category of Thai AUV—or any component thereof—is unreliable merely because it is on the low end of a range.

Regarding the matter of comparing the Thai AUV to that of the Philippines used in the last two segments, the Philippines has not been determined by the Office of Policy to be as comparable to the PRC in terms of economic development as other potential surrogate countries. Therefore, the Philippines does not provide a viable comparison for purposes of determining whether the Thai data are aberrational.

Furthermore, the first two segments of this proceeding contained similar arguments that were rejected because CAHP did not prove there were any flaws in the data and CAHP only asked for the exclusion of low value imports and not comparable high value outliers.[161] As noted, it is not the Department's practice to manipulate GTA data by excluding data from certain countries, except in isolated instances such as where the imports originated in an NME. The Department does not find the Thai AUV for plywood to be aberrational compared with prior periods or against economically comparable countries during this POR. Therefore, the Department will not exclude any imports to Thailand in determining the AUV of plywood inputs for the final results of this review.

Comment 12: Surrogate Value for Wood Scrap

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[158] *See Camau Frozen Seafood*, 929 F. Supp. 2d at 1356 n.9 (explaining that the plaintiff offered no "basis for finding the Bangladeshi labor values aberrational beyond the fact that the Bangladeshi values are the lowest on the record. Furthermore, . . . the Bangladeshi labor values are not significantly different from most or all of the other values on the record."). Thus, the court found that "the Bangladeshi data is not aberrational, it is merely the lowest price in a range of prices." *Id.*

[159] *Id.*

[160] *See* CAHP's Case Brief dated February 9, 2015 at exhibits 6-7.

[161] *See Wood Flooring AR1 Final IDM* at comment 6

CAHP:

- The correct Thai HTS category for Senmao's wood scrap valuation is either 4401.22.00-001 or 4401.22.00-090, which cover "eucalyptus and other non-coniferous wood in chips or particles," or 4401.39.00-000, which covers "sawdust and wood waste scrap not in the form of agglomerated wood pellets."
- Thai HTS 4401.31 covers wood scrap and waste agglomerated into condensed wood pellets, a downstream product of wood scrap that requires significant further processing.
- Senmao reported in its June 30, 2014 section D response (at D-34) that it simply gathers the wood scrap that it sells, and stated in the same response (at D-36) that the scrap it sold was not a downstream product.
- Senmao proposed Thai HTS 4401.21.00-000, which covers coniferous wood. Because Senmao used eucalyptus and other non-coniferous woods, this category is not appropriate.

Dajen/Senmao:

- The Department reported that it used HTS 4401.31.00 because it includes a specific reference to "wood scrap;" however, the SV memo and the SAS margin calculation used HTS category 4401.22.00-090.
- For the final results the Department should use category 4401.31.00-000 because, as the Department stated, it includes an explicit reference to wood scrap.
- There is no evidence that HTS categories 4401.22.00-001 or 4401.22.00-090, endorsed by CAHP, cover wood scrap.

Department's Position: As discussed below, the Department has not granted Senmao a by-product offset for the final results because Senmao failed to provide evidence of its wood scrap production during the POR. Consequently, the issue of the proper SV for wood scrap is moot.

Comment 13: HDF Surrogate Value

Fine Furniture:

- The Department should revise the SV for Senmao's HDF input to use Thai HTS 4411.92.00-090 because the SV (Thai HTS 4411.13.00-090) used in the *Preliminary Results* covers MDF.
- Senmao's HDF is best classified under HTS 4411 subheading "other"- 4411.92.00-090, which represents "Fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances- Other- Of a density exceeding 0.8 g/cm3 -Other." Senmao's HDF density is greater than 0.8g/cm3.

CAHP:

- The Department should not change its valuation of Senmao's HDF, which is consistent with Senmao's own suggested SV for HDF. Thai HTS 4411.13.00-090 used in the *Preliminary Results* is more accurate than Fine Furniture's suggested 4411.92.00.090 because Thai HTS 4411.92 is a basket category that includes other types of ligneous materials that have different material composition than Senmao's HDF but a similar density. By contrast, Thai HTS 4411.13 covers HDF, which is a "fiberboard of wood" that differs from MDF only with regard to density.

Department's Position: The Department reviews SV information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[162] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[163]

The parties dispute the best HTS subheading within Thai HTS 4411 for valuing Senmao's HDF input. Upon reviewing the HTS schedule on the record, the Department notes that Thai HTS 4411 generally encompasses "Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances." Within HTS 4411, HTS subheadings 4411.12.00, 4411.13.00, and 4411.14.00 encompass "Medium density fibreboard (MDF)" of various thicknesses. By contrast, HTS 4411.92.00, 4411,93.00, and 4411.94.00 encompass what is referred to as "Other" fibreboard of varying densities. Other than "Medium Density Fibreboard (MDF)" and "Other," there are no additional types or categories of "Fibreboard of wood or other ligneous materials" referenced under HTS 4411.[164]

In the *Preliminary Results*, the Department valued both HDF and MDF with GTA data under the same heading, Thai HTS 4411.13.00-090.[165] Thai HTS 4411.13.00-090 contains data for "Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substance.—Medium density fiberboard (MDF).—Of a thickness exceeding 5 mm but not exceeding 9mm- Other." No parties dispute that MDF is correctly valued under Thai HTS 4411.13.00-090; Fine Furniture and CAHP dispute whether this same HTS number is appropriate to value HDF.

The Department agrees with Fine Furniture that Senmao makes a clear distinction between the two inputs in its section D response, referring to "HDF: Density over 800 kg/m3" and "MDF: Density from 650-800 kg/m3."[166] The HTS category proposed by Fine Furniture 4411.92.00-090 contains data for "Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances…—Other, Of a density exceeding 0.8 g/cm3—Other." As previously noted, Senmao described its HDF input as of a density in excess of 0.8 g/cm3 or 800kg/m3. Therefore, the Department finds that Senmao's reported description of its HDF input best matches the description of Thai HTS 4411.92.00-090.

There is no indication that the Thai HTS distinguishes explicitly between HDF and MDF under the 4411 heading. CAHP argues that Thai HTS 4411.92 is a basket category containing other materials that do not have the same material composition as Senmao's HDF. CAHP provides no

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[162] *See Lightweight Thermal Paper* and accompanying IDM at Comment 9.
[163] *See*, *e.g.*, *TRBs* and accompanying IDM at Comment 6.
[164] *See* Thai HTS in Petitioner's FOP comments submission of 8/25/2014 at Exhibit 1.
[165] *See* Senmao SV worksheet.

support for this assertion. As noted, the only distinctions recognized under the general category of HTS 4411—"Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances"—are between "Medium density fibreboard (MDF)" and "Other." CAHP's and Fine Furniture's requested HTS subheadings both fall under the same base description of Thai HTS 4411 heading, "Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substance," and the Department finds no basis on the record for concluding that Fine Furniture's proposed HTS somehow relates to a materially different product than Senmao's HDF.

The Department has found that Thai HTS heading 4411 is the best available information to value HDF. All suggested HTS numbers have come from within the 4411 heading and therefore the distinction must be made within the subheadings of Thai HTS 4411 to value each different fiberboard. Based on Senmao's description of its product, the Department finds that Thai HTS 4411.92.00-090 is the best available information to value Senmao's HDF in the final results of this review.[167] Specifically, the Department finds that these data are publicly available, broad market averages, contemporaneous with the POR, tax-exclusive, and specific to the input in question, satisfying the critical elements of the Department's SV test.

Comment 14: Surrogate Value for Glue

Dajen/Senmao:

- The Department should classify Senmao's overlaying glue under Thai HTS 3909.10.90-000, an HTS category for glue in primary form. By valuing Senmao's glue with an HTS for prepared glues, the Department seems to imply that the glue that Senmao reported using cannot be glue in a primary form just because Senmao described it as "finished glue{} and not powder resin." However, Legal Note 6 for Chapter 39 of the harmonized commodity description and coding system provides that "primary forms" can reference more than powder, and can also include liquids and pastes. Thus HTS 3909.10.90-000 is the correct classification for the purposes of the SV because Senmao reported it as the proper HTS classification, and there is no evidence that it is improper.
- Unlike respondents in *Multilayered Wood Flooring AR1*, which CAHP cited in pre-preliminary comments, Senmao reported that it adds flour to glue and reported that additive in its FOP database.

CAHP:

- The Department should continue to value Senmao's finished glue with Thai HS 3506.91.00-000 because Senmao reported that the glues it purchased were "finished glues and not powder resin."
- Because Senmao purchases and consumes finished glue based on urea-formaldehyde resins classified under HTS 3909 in its production of wood flooring, the correct classification is HTS 3506.91.00-000 which is defined as "adhesives based on polymers of headings 3901 to 3913 or on rubber." The Department came to this same conclusion based on very similar facts in *Wood Flooring AR1*.[168]

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[167] *See* Final SV Memo.
[168] *See Wood Flooring AR1*, and the accompanying IDM at Comment 8.

Department Position: The Department reviews SV information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.[169] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[170] As established in the *Preliminary Results*, the Department continues to find that the Thai import data obtained from GTA for HTS 3506.91.90-000 are publicly available, broad market averages, contemporaneous with the POR, tax-exclusive, and specific to the input in question, satisfying the critical elements of the Department's SV selection criteria.

Senmao reported glue as an input in its production of wood flooring. Senmao described its two glues as overlaying glue, used to adhere the face veneer and plywood and fixing glue used for "daily life" and industrial purposes.[171] Senmao disputes only the SV assigned to its overlaying glue.

In a supplemental questionnaire, the Department asked Senmao whether it "purchases finished adhesive glue, or a powder resin that it processes into glue." The Department further requested that if Senmao processes powder resin into finished glue, it must "ensure that all material inputs (*e.g.*, water chemicals, etc.), labor and energy used to process the glue are reported." Rather than reporting any material inputs or claiming that Senmao processed materials into finished glue, Senmao reported that both glues, overlaying glue and fixing glue, are "finished glues and not powder resin,"[172] and did not provide any information regarding additional material inputs into its glue, or labor and energy consumed in processing its "finished" glue. In an exhibit to that same submission, Senmao listed flour as an "additive to mix with the overlaying glue."[173]

With that background, the parties dispute the HTS subheading that best describes Senmao's input. HTS 3909.10.9000 applies to "Urea Resins, In Primary Forms: Thiourea Resins, In Primary Forms." Legal Note 6 of Chapter 39 of the harmonized commodity description and coding system provides that "primary forms" includes liquids, pastes, and powders. In the *Preliminary Results*, after analyzing the information provided by interested parties, the Department determined that HTS subheading 3506.91.90-000, describing prepared adhesive glues based on polymers of headings 3901 to 3913 or on rubber, is the best available data on the record to value Senmao's overlaying glue as an input.

Regarding HTS subheading 3909.10.90-000 and 3506.91.90-000, we find that both represent a broad market average, are publicly available, are exclusive of taxes and duties and are contemporaneous with the POR. However, based on the record before us, we do not find the HTS classifications to be equally specific to the overlaying glue input reported by Senmao.

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[169] *See Lightweight Thermal Paper* and accompanying IDM at Comment 9.
[170] *See, e.g., TRBs* and accompanying IDM at Comment 6.
[171] *See* Senmao's September 29, 2014 Supplemental Section A, C &D Response at 9.
[172] *See* Letter to the Department from Jiangsu Senmao "Section A, C, and D Supplemental Questionnaire" September 29, 2014 at page 8 question 19.
[173] *See* Sections A, C and D Supplemental Questionnaire Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. response, September 29, 2014, at Exhibit SD-1 Input Checklist.

As summarized above, Senmao described its glue as "finished" and the record reflects that Senmao's "finished" glue underwent little (if any) processing. Specifically, Senmao did not report any material inputs, labor, and energy consumed in processing its glue, and instead only separately reported flour as an "additive to mix the overlaying glue." As phrased, this characterization suggests that flour is added to prepared overlaying glue, and does not clearly establish that it is a necessary input into producing overlaying glue. Moreover, even if it were added to produce the overlaying glue, this would suggest only very minimal processing of the purchased glue.

Under these circumstances, we continue to find, consistent with *Wood Flooring AR1*,[174] that HTS 3506.91.90-000 represents the best available information to value overlaying glue. To the extent that Senmao's purchased "finished" glue undergoes any further processing, it is minimal at best. This weighs against finding that the overlaying glue reported by Senmao was in a "primary form." Further, Senmao expressly stated that it did not use powder resin in producing subject merchandise, which is a subset of the products covered under HTS 3909.10.90-000. As such, HTS 3909.10.90-000 includes a product that Senmao expressly disclaims using (powder resin), detracting from its specificity to Senmao's input. For these reasons, we find that an HTS for prepared glue better reflects the final, or nearly final, purchased "finished" glue that Senmao reported using during the POR. We find that this HTS best accounts for the full value of the finished glue consumed by Senmao in producing subject merchandise.

Accordingly, the Department will value Senmao's overlaying glue using GTA data for Thai HTS 3506.91.90-000 "Adhesives based on polymers of heading 3901 to 3913 or on rubber" for the final results.

Senmao Specific Issues*:*

Comment 15: Senmao's Domestic Truck Freight Costs on Wood Inputs

CAHP:

- Senmao reported its wood inputs on a cubic per meter basis. However, the SV for domestic truck freight is calculated on a U.S. dollars per-Kg/per-Km basis. The Department failed to apply the kilogram per cubic meter conversion factor for each wood input with the exception of plywood. For the final results, the Department should correct this ministerial error by applying the appropriate conversion factor for each wood input in the calculation of associated domestic truck freight costs.

Department's Position: We agree with CAHP and have corrected these errors for the final results.[175]

Comment 16: Whether to Deny Senmao's By-Product Offset

CAHP:

[174] *See Wood Flooring AR1*, and accompanying IDM at Comment 8.
[175] *See* Analysis for the Final Results of Multilayered Wood Flooring from the People's Republic of China: Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. dated, issued concurrently with this memorandum.

- Senmao reported that it both recycled and sold wood scrap, but reported only the quantity of wood scrap sold, and did not provide the quantity of wood scrap consumed as fuel.
- Senmao stated that it does not track the quantity of wood scrap generated during the POR and provided no inventory records to support the quantity of wood scrap recovered for sale rather than for internal consumption.
- While Senmao's claimed by-product offset for wood scrap is based on POR sales of wood scrap, it is probable that a portion of Senmao's POR sales of wood scrap consisted of scrap generated prior to the POR. Moreover, it is possible that all of its POR sales of wood scrap were generated prior to the POR and that the wood scrap generated during the POR was internally consumed as fuel. Senmao provided no support that the wood scrap sold during the POR was generated during the POR.

Dajen/Senmao:

- If the Department's practice is, as CAHP acknowledges, to ignore wood scrap recycled and consumed as biofuel, there was no need to separately report this type of scrap. Furthermore, CAHP never raised this issue in its comments regarding Senmao's questionnaire response or in pre-preliminary results comments.
- CAHP's argument that a byproduct offset should be denied because Senmao did not document its production of wood scrap during the POR is without merit. Because Senmao reported the amount of wood scrap sold, the Department should offset normal value.
- CAHP provided no evidence that the wood scrap information reported by Senmao is inaccurate and fails to address whether any wood scrap was generated from merchandise at the work-in-process stage.
- If the Department believed there were an issue or that Senmao reported deficient information concerning its reported scrap, the Department was obligated to inform Senmao under section 782(d) of the Act. However, the Department did not request further information from Senmao on this topic in any supplemental questionnaires.
- The statutory requirements for using facts available have not been met; thus there is no basis to deny Senmao's offset.

Department's Position: Senmao requested a by-product offset for the quantity of wood scrap that it sold. According to 19 CFR 351.401(b)(1), "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Furthermore, "the by-product offset is limited to the total production quantity of the byproduct . . . produced during the POR, so long as it is shown that the by-product has commercial value."[176]

The antidumping questionnaire issued to Senmao explicitly asked for both production records and sales records demonstrating that the by-product was both produced and sold during the POR. The questionnaire explained that "{b}y-product offsets/co-product offsets are only granted for merchandise that is either sold or reintroduced into production during the

[176] *See Frontseating Service Valves* and accompanying IDM at Comment 18; *see also TRBs*, and accompanying IDM at Comment 3 ("{T}o be eligible for an offset, a respondent needs to provide and substantiate the quantity of by-products it generated from the production of subject merchandise during the POR as well as demonstrate that the by-product has commercial value.").

POI/POR, *up to the amount of that by-product/co-product actually produced during the POI/POR*."[177] The questionnaire thus asked that Senmao complete a chart showing, "by month, the quantity produced, sold, reintroduced into production, or otherwise disposed of," and requested "production records demonstrating production of each by-product/co-product during one month of the POR."[178] In other words, in order to qualify for the offset, Senmao needed to provide and substantiate the quantity of wood scrap by-products it generated from the production of subject merchandise during the POR as well as demonstrate that the by-product has commercial value.

Providing the production quantity is important because, in considering a by-product offset, the Department examines whether the by-product was produced from the quantity of FOPs reported, and whether the respondent's production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset.[179] Providing the production quantity is also important to ensure that the by-product was actually generated as a consequence of production of the subject merchandise, and not, for example, simply purchased and resold or sold out of inventory. When the respondent substantiates the quantity of a by-product generated during production of the merchandise under consideration, as well as that the by-product has commercial value, as required by Department practice, the Department uses the quantity generated to determine an offset to NV.

Based on this practice as identified in the initial questionnaire sent to Senmao in this review, for the wood scrap by-products which Senmao claims were produced and sold during the POR the Department has denied Senmao's requested by-product offset for the final results. While Senmao has supported that the wood scrap by-products have commercial value,[180] Senmao provided no evidence supporting its claim that the wood scrap was generated from production of subject merchandise during the POR, or that it was generated by Senmao at all.[181] In completing the chart requesting that Senmao provide monthly production and sales of scrap for the POR, Senmao submitted a spreadsheet "identifying, by month, the quantity sold of wood scrap,"[182] but explained that "Senmao does not record the actual wood scrap generated each month. The quantity is only weighed and recorded when the wood scrap is sold to another company."[183] Although the Department preliminarily granted Senmao a by-product offset, we agree with CAHP that Senmao failed to substantiate its scrap production. In addition, we note that not only did Senmao fail to substantiate its scrap production, Senmao also made no effort to offer any alternative methods to report a reasonable

[177] *See* Letter from the Department to Senmao: "2012– 2013 Antidumping Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Antidumping Questionnaire," dated May 15, 2014 at D-9 (emphasis added).
[178] *Id*.
[179] *See Mid Continent Nail Corporation v. United States*, Slip Op. 10-47, at 19 (CIT May 4, 2010).
[180] *See* Senmao's June 30, 2014 section C&D questionnaire response at exhibit D-8-1, providing invoices and evidence of receipt of payment for sales of wood scrap.
[181] In the investigation of this order, the Department granted a by-product offset to a respondent where the respondent did not provide scrap production records. However, in the investigation, and unlike here, Department verified the company and observed the generation of scrap in the production of subject merchandise. *See Wood Flooring LTFV Final* and accompanying IDM at Comment 23.
[182] *See* Senmao's section C&D response at D-35 and exhibit D-12.
[183] *See* Senmao's section C&D response at D-35.

estimation of its scrap production. Accordingly, for the final results, the Department has corrected this oversight and denied Senmao any offset to normal value for sales of wood scrap.

Senmao argues that CAHP did not raise this issue in deficiency comments or in pre-preliminary comments, but this is not a prerequisite to determining whether Senmao is entitled to the offset. As explained above, in accordance with 19 CFR 351.401(b)(1), Senmao has the burden of establishing its entitlement to the offset. Moreover, Senmao is also mistaken in arguing that the Department was obligated to point out deficiencies in Senmao's response and/or to request additional information from Senmao. Under the circumstances, it would have been fruitless to request additional information; as explained above, Senmao definitively stated that it was unable to corroborate its scrap production. Consequently, Senmao was not entitled to the offset. The fact that the Department mistakenly allowed the offset for the *Preliminary Results* does not prevent the Department from correcting its error for the final results.

Senmao argues that the Department did not request additional information to address deficiencies in its response and that to adjust or deny its reported wood scrap would amount to an unjustified application of FA. We disagree. The statute neither requires nor forbids the application of offsets. Indeed, the statute "does not mention the treatment of by-products, nonetheless, Commerce sometimes grants a respondent a 'credit' for a 'by product . . . generated in the manufacturing process {that is} either reintroduced into production or sold for revenue.'"[184] "When a respondent substantiates the quantity of a by-product generated during production of the merchandise under consideration, as required by Department practice, the Department uses the quantity generated to determine as an offset to NV."[185] Because the Department's practice and regulations require that a respondent establish its entitlement to the offset, denial of the offset is not an application of FA. Moreover, as already noted, issuing any supplemental questionnaires regarding this issue would have been an exercise in futility. The reason for denying the scrap offset is simple: Senmao failed to meet the Department's well-established prerequisite, as explicitly identified in the initial questionnaire, that respondents prove the amount of scrap they produced during the review period.

Indeed, the CIT recently sustained not only the Department's denial of the offset, but also the Department's decision to not issue a supplemental questionnaire in a case with almost identical circumstances.[186] In that case, a company responding to the same questionnaire as that issued to Senmao stated that it kept no records of scrap production. The CIT found that the Department's questionnaire stated exactly what the company needed to provide, and the company answered that it could not provide it. "In such situations, Commerce need not flag deficiencies in a party's responses, because the party never 'responded' to the agency's request to begin with."[187] Therefore, Senmao's assertion that it does not record the quantity

[184] *See Guangdong Chemicals Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1364, 1373 (CIT 2006).
[185] *See Polyethylene Terephthalate Film* and accompanying IDM at Comment 5.
[186] *See American Tubular Products, LLC v. United States*, Slip Op. 14-116, at 20 (CIT 2014) ("The court also disagrees that Commerce needed to identify shortcomings in Chengde's response before denying the offset.").
[187] *Id*.

of scrap generated precludes the Department from granting a by-product offset because Senmao is unable to substantiate that it produced any of the scrap that it sold during the POR.

<u>Old Master Issue:</u>

Comment 17: Separate Rate Calculation

Old Master:

- There is no requirement to use, or justification for using, a separate rate methodology that yields assessment rates more than quadrupling the deposit rate.
- The Department should not apply a calculation shortcut, designed for investigations, that results in an unjust duty assessment.

No other parties commented on this issue.

Department's Position: The statute and the Department's regulations do not address the establishment of a rate to be applied to individual separate rate respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Because of this silence, the Department has developed reasonable methods for establishing the separate rate assigned to eligible respondents not selected for individual examination. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents which were not examined in an administrative review.

Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}." Accordingly, when only one weighted-average dumping margin for the individually investigated respondents is above *de minimis* and not based entirely on facts available, the separate rate will be equal to that single above *de minimis* rate.

In these final results, the Department has calculated a rate for Senmao that is not zero, *de minimis*, or based entirely on facts available. Therefore, the Department has assigned to the companies that have not been individually examined but have demonstrated their eligibility for a separate rate a margin of 13.74 percent, which is the rate calculated for Senmao. This approach is consistent with section 735(c)(5)(A) of the Act, which as noted, we use as a guidepost in NME reviews.

While we agree with Old Master that we have discretion to choose among methodologies for calculating separate rates, we do not agree that we have exercised that discretion unreasonably in this review. Although Old Master states that the Department has better options to calculate a separate rate assessment, Old Master has failed to establish that our chosen option, which is consistent with our customary practice, is unreasonable. Additionally, the Department disagrees with Old Master that it is unjust to calculate an all-others assessment rate that is quadruple the cash deposit rate. When an exporter is included within an administrative review, the assessment rate for the exporter is based on the final results of that review rather than its cash deposit rate.[188] As the only individually examined weighted-average dumping margin above *de minimis* and not based entirely on facts available, the Department believes it is reasonable to assign the rate calculated for Jiangsu Senmao to all of the non-examined respondents.

RECOMMENDATION:

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

AGREE ✓ DISAGREE ______

Lynn M. Fischer Fox
Deputy Assistant Secretary for Policy & Negotiation

July 8, 2015
Date

[188] *See, e.g.*, section 751(a) of the Act.

Table of Shortened Citations

2008 Withdrawal	*Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008)
The Alliance for Free Choice and Jobs in Flooring Membership	The Alliance for Free Choice and Jobs in Flooring Membership consists of the following domestic producers of the like product: Swiff Train Co.; Metropolitan Hardwood Floors, Inc.; Real Wood Floors, LLC.; Galleher Corp; Crescent Hardwood Supply; Custom Wholesale Floors, Inc.; Urban Global LLC; Pinnacle Interior Elements, Ltd.; Timeless Design Import LCC; CDC Distributors, Inc.; CLBY Inc. (dba D&M Flooring); Johnson's Premium Hardwood Flooring, Inc.; The Master's Craft Corp.; BR Custom Surface; Doma Source LLC; Wego Chemical & Chemical & Mineral Corp. and V.A.L. Floors, Inc.
Antidumping Methodologies	*Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006)
Antidumping Methodologies: Labor	*Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011)
CAHP Member Companies	The member-companies of the CAHP are as follows: Anderson Hardwood Floors, LLC; From the Forest; Howell Hardwood Flooring; Mannington Mills, Inc.; Nydree Flooring; and Shaw Industries Group, Inc.
Carbon Steel Flat Products from Romania	*Notice of Final Determination of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 66 FR 49625 (September 28, 2001)
Chlorinated Isos 11/12 Final	*Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014)
Final Modification for Reviews	*Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012)
Fresh Garlic from the PRC	*Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976 (June 21, 2010)
Frontseating Service Valves	*Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011)
Hangers 2011-2012	*Steel Wire Garment Hangers from the People's Republic of*

	China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012, 79 FR 31298 (June 2, 2014)
Hot Rolled Carbon Steel Romania	*Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005)
Initiation Notice	*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 6147 (February 3, 2014)
Labor Methodologies	*Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011)
Lightweight Thermal Paper	*Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008)
Modification of the Case Reference File in ACE (November 18, 2013).	On August 28, 2013, in consultation with CBP, the Department added the following HTSUS classification to the AD/CVD module for wood flooring: 9801.00.2500. *See* Letter to the File from Lilit Astvatsatrian, Case Analyst, Enforcement and Compliance, Office IV, regarding "Multilayered Wood Flooring from the PRC, Modification of the Case Reference File in ACE" (November 18, 2013*).*
Methodological Change for Implementation of Section 772(c)(2)(B)	*Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012).
Monosodium Glutamate	*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)
Nails Final Results	*Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013)
Persulfates from PRC	*Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (Feb. 2, 2005)
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