



A-570-970  
NSR: Muyun II  
12/1/14-5/31/15  
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**DATE:** December 14, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Huzhou Muyun  
Wood Co., Ltd. Antidumping Duty New Shipper Review, 2014-  
2015: Multilayered Wood Flooring from the People's Republic of  
China

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## SUMMARY

In response to a request from an interested party, the Department of Commerce (Commerce) is conducting a new shipper review (NSR) of the antidumping duty order on multilayered wood flooring (MLWF) from the People's Republic of China (China). This review covers one exporter of subject merchandise, Huzhou Muyun Wood Co., Ltd. (Muyun). The period of review (POR) is December 1, 2014, through May 31, 2015. We preliminarily find that Muyun has not made sales of subject merchandise at less than normal value (NV). Petitioner is the Coalition for American Hardwood Parity (CAHP).<sup>1</sup>

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<sup>1</sup> The Coalition for American Hardwood Parity consists of the following domestic producers of the like product: Anderson Hardwood Floors, LLC; From the Forest; Howell Hardwood Flooring; Mannington Mills, Inc.; Nydree Flooring; and Shaw Industries Group, Inc. *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews; 2012-2013, 79 FR 66355, and attached Preliminary Determination Memorandum (November 7, 2014).*



## BACKGROUND

On December 8, 2011, Commerce published in the *Federal Register* an antidumping duty order on MLWF from China.<sup>2</sup> On June 23, 2015, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(b), Commerce received a timely NSR request from Muyun.<sup>3</sup> On July 21, 2015, Commerce obtained U.S. Customs and Border Protection (CBP) data for the Harmonized Tariff Schedule of the United States (HTSUS) numbers included in the “Scope of the Order” section below.<sup>4</sup> On July 29, 2015, Commerce initiated this NSR for Muyun in order to determine whether imports into the United States of MLWF from China are being sold below NV.<sup>5</sup>

On May 31, 2016, Commerce published the preliminary rescission of Muyun’s NSR, due to the determination that Muyun’s sale was non-*bona fide*.<sup>6</sup> On July 7, 2016, Commerce received a case brief from Muyun.<sup>7</sup> On August 17, 2016, Commerce held a hearing on this matter at the request of the parties.<sup>8</sup> On October 26, 2016, Commerce published the final rescission of Muyun’s NSR.<sup>9</sup>

On December 11, 2017, the Court of International Trade (CIT) remanded Commerce’s determination, holding that the conclusion that Muyun’s sale was non-*bona fide* was not supported by substantial evidence.<sup>10</sup> On February 8, 2018, Commerce released its draft results of redetermination pursuant to court order, in which it continued to find that Muyun’s single sale was non-*bona fide*.<sup>11</sup> On February 20, 2018, Muyun submitted comments regarding the Draft Remand.<sup>12</sup> On March 6, 2018, Commerce released its final results of redetermination pursuant to court order, continuing to find that Muyun’s sale was non-*bona fide*.<sup>13</sup> On July 16, 2018, the CIT issued a final judgment that Commerce’s ultimate conclusion was not supported by substantial evidence, that the rescission of the NSR could not be upheld, and instructed

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<sup>2</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 FR 76690 (December 8, 2011).

<sup>3</sup> See Letter from Muyun to the Secretary of Commerce “Multilayered Wood Flooring from the People’s Republic of China; A-570-970; Request for Antidumping Duty New Shipper Review,” dated June 23, 2015 (Muyun Initiation Request).

<sup>4</sup> See Memorandum to the File, regarding, “U.S. Customs and Border Protection Data,” dated July 21, 2015.

<sup>5</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Initiation of Antidumping Duty New Shipper Reviews; 2014-2015* 80 FR 45192 (July 29, 2015) (*Initiation Notice*).

<sup>6</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Preliminary Rescission of 2014-2015 Antidumping Duty New Shipper Reviews*, 81 FR 34310 (May 31, 2016).

<sup>7</sup> See letter from Muyun, regarding “Multilayered Wood Flooring from the People’s Republic of China; Case Brief,” dated July 7, 2016).

<sup>8</sup> See letter from Muyun, regarding “Multilayered Wood Flooring from the People’s Republic of China Request for Closed Hearing,” dated June 30, 2016.

<sup>9</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2014-2015*, 81 FR 74393 (October 26, 2016).

<sup>10</sup> See *Huzhou Muyun v. United States*, Court No. 16-00245, Slip Op. 17-162 (December 11, 2017).

<sup>11</sup> See Draft Results of Redetermination Pursuant to Court Order in *Huzhou Muyun v. United States*, Court No. 16-00245, dated February 8, 2018 (Draft Remand).

<sup>12</sup> See letter from Muyun, regarding “Multilayered Wood Flooring from the People’s Republic of China Comments on Draft Remand Results,” dated February 20, 2018.

<sup>13</sup> See Final Results of Redetermination Pursuant to Court Order in *Huzhou Muyun Wood Co., Ltd. v. United States*, Court No. 16-00245, dated March 6, 2018 (Final Remand).

Commerce to proceed with Muyun's new shipper review.<sup>14</sup> On August 16, Commerce published its notification to the public that the final judgment in this case is not in harmony with the final rescission.<sup>15</sup>

On October 19, 2018, Commerce notified interested parties that a new segment of the proceeding regarding Muyun's new shipper review had been created.<sup>16</sup> On November 1, 2018, Commerce moved Muyun's submissions from the original new shipper review record as well as surrogate value data and comments and sales data from the December 1, 2014 through November 30, 2015 administrative review onto the record of this new shipper review.<sup>17</sup> On November 1, 2018, Commerce issued an additional supplemental questionnaire to Muyun.<sup>18</sup> On November 5, 2018 Commerce provided an estimated timeline of this new shipper review for interested parties, stating its intent to issue the preliminary results on December 14, 2018.<sup>19</sup> On November 8, 2018 Muyun submitted a timely response to the supplemental questionnaire.<sup>20</sup>

On November 15, 2018, American Manufacturers of Multilayered Wood Flooring (AMMWF) timely filed an entry of appearance.<sup>21</sup>

## SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)<sup>22</sup> in combination with a core.<sup>23</sup> 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.

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<sup>14</sup> See *Huzhou Muyun Wood Co., Ltd. v. United States*, Court No. 16-00245, Slip Op. 18-89 (CIT July 16, 2018).

<sup>15</sup> See *Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Rescission of the Antidumping Duty New Shipper Review*, 83 FR 40748 (August 16, 2018).

<sup>16</sup> See Memorandum to the File, regarding "New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – APO Access," dated October 19, 2018.

<sup>17</sup> See Memorandum to the File, regarding "New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – Huzhou Muyun Wood Co., Ltd. Submissions," dated November 1, 2018 (Data Release Memo).

<sup>18</sup> See letter from Commerce, regarding "New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Supplemental Questionnaire," dated November 1, 2018.

<sup>19</sup> See Memorandum to the File, regarding "New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – Estimated Timeline" dated November 5, 2018.

<sup>20</sup> See letter from Muyun, regarding "Multilayered Wood Flooring from the People's Republic of China- New Shipper Review Supplemental Questionnaire Response," dated November 8, 2018.

<sup>21</sup> See letter from AMMWF, regarding "Multilayered Wood Flooring from the People's Republic of China: Entry of Appearance and Application for Access to Information Provided Under Administrative Protective Order," dated November 15, 2018. As noted above, Commerce's previous rescission of the Muyun NSR was subject to litigation, and the CIT directed Commerce to proceed with a NSR. Therefore, Commerce initiated a new segment of the proceeding, set new deadlines, set periods for comment, and allowed interested parties to participate. Accordingly, AMMWF's APO Application has been granted. See APO Service List, dated December 3, 2018.

<sup>22</sup> A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

<sup>23</sup> Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

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

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

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

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

Imports of the subject merchandise are provided for under the following subheadings of the HTSUS: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110;

4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

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

## DISCUSSION OF THE METHODOLOGY

### *Bona Fide Sale Analysis*

An exporter or producer that did not export or sell subject merchandise to the United States during the period of investigation, and that is not affiliated with an exporter or producer that did, may request a NSR seeking an individual dumping margin if it has exported, or sold for export, subject merchandise to the United States.<sup>24</sup> Pursuant to section 751(a)(2)(B)(iv) of the Act, any weighted-average dumping margin determined in a NSR must be based solely on *bona fide* sales during the period of review. Where a review is based on a single sale, exclusion of that sale as non-*bona fide* necessarily must end the review.<sup>25</sup>

To determine whether a sale in a new shipper review is *bona fide*, Commerce considers, depending on the circumstances surrounding such sales:

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.<sup>26</sup>

In examining the totality of the circumstances, Commerce looks to whether the transaction is “commercially unreasonable” or “atypical of normal business practices.”<sup>27</sup>

Although some *bona fide* issues may share commonalities across various Commerce cases, Commerce examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.<sup>28</sup> In *TTPC*, the U.S. Court of International Trade

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<sup>24</sup> See section 751(a)(2)(B) of the Act and 19 CFR 351.214(b).

<sup>25</sup> See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (*TTPC*).

<sup>26</sup> See Section 751(a)(2)(B)(iv) of the Act.

<sup>27</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (*New Donghua*), citing *Windmill Int'l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (*Windmill*); see also *TTPC* at 1249-50.

<sup>28</sup> See *New Donghua*, 374 F. Supp. 2d at 1340, n.5, citing *TTPC*, 366 F. Supp. 2d at 1260, and *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review*

affirmed Commerce's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,"<sup>29</sup> and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale."<sup>30</sup> Moreover, Commerce's practice makes clear that Commerce will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an AD order.<sup>31</sup> Thus, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice.<sup>32</sup>

Based on our analysis of the factors described above, we preliminarily find that Muyun's U.S. sale is a *bona fide* transaction for purposes of this NSR.<sup>33</sup>

#### *Non-Market Economy Country Status*

Commerce considers China to be a nonmarket economy (NME country).<sup>34</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. As such, Commerce continues to treat China as an NME in this proceeding. Accordingly, we calculated NV using the factors of production (FOP) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

#### *Separate Rate*

In proceedings involving NME countries, Commerce has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>35</sup> It is Commerce's policy to assign all exporters of subject merchandise in an NME country a single NME-wide rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>36</sup> Exporters can demonstrate this independence through evidence of the absence of both *de jure* and *de facto* governmental

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and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>29</sup> See *TTPC*, 366 F. Supp. 2d at 1250.

<sup>30</sup> *Id.* at 1263.

<sup>31</sup> See *New Donghua*, 374 F. Supp. 2d at 1339.

<sup>32</sup> *Id.*

<sup>33</sup> See memorandum to the file, regarding "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: *Bona Fide* Sale Analysis for Huzhou Muyun Wood Co., Ltd.," dated December 14, 2018.

<sup>34</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

<sup>35</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

<sup>36</sup> *Id.*

control over export activities.<sup>37</sup> Commerce analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.<sup>38</sup> However, if Commerce determines that a company is foreign owned or located in a market economy (ME) country, then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>39</sup> Commerce received complete responses to the antidumping duty questionnaire from Muyun which contained information pertaining to its eligibility for a separate rate.

### Absence of De Jure Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies.<sup>40</sup> The evidence provided by Muyun supports a preliminary finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with Muyun's business and export licenses; (2) legislative enactments decentralizing control of companies; and (3) formal measures by the government decentralizing control of companies.<sup>41</sup>

### Absence of De Facto Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EP) are set by or are subject to the approval of a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>42</sup> Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude Commerce from assigning the respondents separate rates. The evidence provided by Muyun supports a preliminary finding of *de facto* absence of government control based on the criteria outlined above.<sup>43</sup> Specifically, Muyun provided record evidence that: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own

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<sup>37</sup> *Id.*

<sup>38</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>39</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>40</sup> See *Sparklers*, 56 FR at 20589.

<sup>41</sup> See letter from Muyun, regarding "Multilayered Wood Flooring from the People's Republic of China Section A Response (Section A Response)," at Exhibit A-1, A-2, and A-3 available at Data Release Memo at Attachment 1.

<sup>42</sup> See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>43</sup> See Section A Response at Exhibit A-1, A-2, and A-3 available at Data Release Memo at Attachment 1.

personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans.<sup>44</sup>

Given that Commerce finds that Muyun operates free of *de jure* and *de facto* governmental control, we preliminarily determine that it satisfies the criteria for a separate rate.

### *Surrogate Country*

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information from a surrogate ME country or countries considered to be appropriate by Commerce.<sup>45</sup> When valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>46</sup> Once Commerce has identified the countries that are economically comparable to China and that are significant producers of comparable merchandise, Commerce will select a primary surrogate country based upon whether the data for valuing FOPs are both available and reliable.<sup>47</sup> Further, Commerce normally values all FOPs in a single surrogate country.<sup>48</sup>

In examining which country to select as its primary surrogate country for this proceeding, Commerce first determined that Bulgaria, Ecuador, Mexico, Romania, South Africa and Thailand are countries comparable to China in terms of economic development.<sup>49</sup> On October 20, 2015, Muyun provided comments in support of selecting Thailand as the primary surrogate country.<sup>50</sup> Muyun further provided information for the valuation of its FOPs based on Thai sources.<sup>51</sup> No party filed rebuttal surrogate country comments or information.

### *Economic Comparability*

As explained in our Policy Memorandum, Commerce considers Bulgaria, Ecuador, Mexico, Romania, South Africa and Thailand all comparable to the China in terms of economic development.<sup>52</sup> Therefore, we consider all six countries as having satisfied this prong of the surrogate country selection criteria.<sup>53</sup>

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<sup>44</sup> *Id.* at attachment 1.

<sup>45</sup> See section 773(c)(1) of the Act.

<sup>46</sup> See section 773(c)(4) of the Act.

<sup>47</sup> See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 23322 (April 28, 2014) and attached Preliminary Decision Memorandum (no change in the final results).

<sup>48</sup> See 19 CFR 351.408(c)(2).

<sup>49</sup> See letter from Muyun, regarding "Multilayered Wood Flooring from the People's Republic of China NSR – Surrogate Country Comments," (Surrogate Country Comments) available at Data Release Memo at Attachment 8.

<sup>50</sup> *Id.* at attachment 8.

<sup>51</sup> See letter from Muyun, regarding "Multilayered Wood Flooring from the People's Republic of China NSR – Preliminary Surrogate Value Submission," (Surrogate Value Comments) available at Data Release Memo at Attachment 9.

<sup>52</sup> See Surrogate Country Comments available at Data Release Memo at Attachment 8.

<sup>53</sup> See section 773(c)(4)(A) of the Act.



### *Significant Producer of Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the Policy Bulletin 04.1 for guidance on defining comparable merchandise.<sup>54</sup> Policy Bulletin 04.1 states that “[t]he terms ‘comparable level of economic development,’ ‘comparable merchandise,’ and ‘significant producer’ are not defined in the statute.” Policy Bulletin 04.1 further states that “[i]n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”<sup>55</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>56</sup> Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.<sup>57</sup> “In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.”<sup>58</sup> Based on the plywood production and trade statistics for 2012-2014 from the Food and Agriculture organization of the United Nations placed on record of this review in surrogate country comment submissions, Commerce finds that Bulgaria, Ecuador, Mexico, Romania, South Africa and Thailand are all significant producers of comparable merchandise.<sup>59</sup>

### *Data Availability*

When Commerce finds that there is more than one country that is at the same level of economic development as the NME country and is a significant producer of comparable merchandise, Commerce will consider the quality and availability of the surrogate value (SV) data.

{I}f more than one country has survived the selection process to this point, the country with the best factors data is selected as the surrogate country. Even if no issues arise regarding economic comparability and significant production, data quality is a critical consideration affecting surrogate country selection. After all, a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable. Limited data availability

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<sup>54</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1), available at <http://enforcement.trade.gov/policy/index.html>.

<sup>55</sup> *Id.*

<sup>56</sup> Policy Bulletin 04.1 also states that “[i]f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” See *id.*, at n.6.

<sup>57</sup> See *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997), and accompanying Issues and Decision Memorandum at Comment 1 (“[T]o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>58</sup> See Policy Bulletin 04.1.

<sup>59</sup> See Surrogate Country Comments at Exhibit 2, available at Data Release Memo at Attachment 8.

sometimes is the reason why the team will ‘go off’ the OP list in search of a viable primary surrogate country.<sup>60</sup>

When choosing the best available SV information as required by section 773(c)(1) of the Act, Commerce considers several factors including the specificity, contemporaneity, and quality of the data.<sup>61</sup> While there is no hierarchy for applying the SV selection criteria, Commerce must weigh available information with respect to each input value and make a product-specific and segment-specific decision as to what the best SV is for each input.<sup>62</sup> Further, it is Commerce’s preference, consistent with 19 CFR 351.408(c)(2), to value FOPs in a single surrogate country, when possible.<sup>63</sup>

The record of this proceeding indicates that specific, contemporaneous, and high-quality data are readily available from Thailand for all FOPs.<sup>64</sup> Furthermore, the record of this proceeding provides no surrogate value data from any other possible surrogate country. As Thailand is the only possible surrogate country with record data in which to calculate surrogate values and given that the record data demonstrates that the Thai data is reliable, usable, and relevant to value FOPs within this segment,<sup>65</sup> Commerce has selected Thailand as the surrogate country.

#### *Date of Sale*

In identifying the date of sale of the subject merchandise, Commerce will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.” Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>66</sup> In *Allied Tube*, the CIT noted that a “party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisf{y}’ Commerce that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’”<sup>67</sup> The material terms of sale normally include the price, quantity, delivery terms and payment terms of the

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<sup>60</sup> See Policy Bulletin 04.1.

<sup>61</sup> See, e.g., *Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010), and accompanying Issues and Decision Memorandum at Comment 6.

<sup>62</sup> See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>63</sup> *Id.*

<sup>64</sup> See Surrogate Value Comments available at Data Release Memo at Attachment 9; see also letter from Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao), regarding “Multilayered Wood Flooring from the People’s Republic of China: Comments Regarding Surrogate Value Selection,” (AR4 SV Comments) at Exhibit 5, available at Data Release Memo at Attachment 10.

<sup>65</sup> See 1 Surrogate Value Comments available at Data Release Memo at Attachment 9; see also AR4 SV Comments at Exhibit 5, available at Data Release Memo at Attachment 10.

<sup>66</sup> See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

<sup>67</sup> See *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (“*Allied Tube*”).

sale.<sup>68</sup> Consistent with our regulatory presumption for invoice date, Muyun reported the invoice date as the date of sale, and that the terms of sale did not change after the invoice date.<sup>69</sup> Accordingly, because record evidence does not demonstrate that the material terms of sale were established on another date, Commerce preliminarily determines to use the invoice date as the date of sale in accordance with 19 CFR 351.401(i).

### *Fair Value Comparisons*

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), in order to determine whether Muyun's sale of MLWF to the United States was made at less than NV, we compared the EP to NV, as described in the "U.S. Price" and "Normal Value" sections below.

### *Differential Pricing Analysis*

Pursuant to 19 CFR 351.414(b)(1) and (c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping duty investigations, Commerce examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.<sup>70</sup> In recent proceedings, Commerce applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>71</sup> Commerce finds the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

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<sup>68</sup> See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>69</sup> See Section A Response available at Data Release Memo at Attachment 1.

<sup>70</sup> See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>71</sup> See *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and attached Issues and Decision Memorandum at Comment 3; see also *Frontseating Service Valves From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 27954 (May 13, 2013); see also *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 21101 (April 9, 2013).

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code, *etc.*) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each has at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

#### *Results of the Differential Pricing Analysis*

In the instant review, because there is only one sale, the question as to whether a pattern of prices that differ significantly exists is moot. Accordingly, Commerce is calculating Muyun's dumping margin using the average-to-average method pursuant to 19 CFR 351.414(b)(1) and (c)(1).

#### *U.S. Price*

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for the U.S. sale of Muyun because the subject merchandise was sold directly to an unaffiliated customer in the United States prior to importation, and because CEP was not otherwise warranted.<sup>72</sup>

We based EP on the price to an unaffiliated purchaser in the United States, as applicable. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses, domestic inland freight and brokerage & handling, as applicable.<sup>73</sup> Additionally, in accordance with section 772(c)(2)(B) of the Act, Commerce deducted any irrecoverable value-added tax (VAT) from the starting price as explained below.

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<sup>72</sup> See letter from Muyun, regarding "Multilayered Wood Flooring from the People's Republic of China Section C & D Response," (Section C & D Response) available at Data Release Memo at Attachment 2.

<sup>73</sup> See Muyun Preliminary Results Analysis Memorandum, issued concurrently with this memorandum.

## *Value Added Tax*

In 2012, Commerce 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 NME countries in accordance with section 772(c)(2)(B) of the Act.<sup>74</sup> Commerce explained that when an NME government imposes 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, Commerce will reduce the respondent’s EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.<sup>75</sup> Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.<sup>76</sup>

Commerce’s methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one. Information placed on the record of this review by respondent indicates that, according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 9 percent.<sup>77</sup> For the purposes of these preliminary results, therefore, we removed from U.S. price the difference between the VAT rate and the rebate rate (*i.e.*, eight percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation in accordance with Commerce’s methodology.<sup>78</sup>

## *Normal Value*

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if the merchandise is exported from an NME country and Commerce finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in a NME context, Commerce will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. This methodology ensures that Commerce’s calculations are as accurate as possible.<sup>79</sup>

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<sup>74</sup> See *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, 36482-84 (June 19, 2012) (*Methodological Change*).

<sup>75</sup> *Id.* at 36483; see also *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

<sup>76</sup> *Methodological Change*, 77 FR at 36483.

<sup>77</sup> See Section C & D Response available at Data Release Memo at Attachment 2

<sup>78</sup> *Id.* at Exhibit SC-2; see also *Methodological Change*.

<sup>79</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006).

Section 773(c)(1) of the Act provides that Commerce will value the FOPs in NME cases using the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the administering authority. Section 773(c)(4) of the Act requires that when valuing the FOPs, Commerce utilize, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a comparable level of economic development, and (2) significant producers of comparable merchandise.<sup>80</sup> As stated above, Commerce preliminarily determined to select Thailand as the surrogate country.

We calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, the FOPs include but are not limited to: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs.<sup>81</sup> Muyun reported that all of the subject merchandise that it sold to the United States during the POR was self-produced.<sup>82</sup> Commerce used the FOPs reported by Muyun for materials, energy, labor, and packing.

### *Factor Valuations*

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOPs reported by Muyun for the POR. To calculate NV, Commerce multiplied the reported per-unit factor consumption quantities by publicly available SVs in accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), except as noted below. Our practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.<sup>83</sup> Commerce adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, Commerce added to the Thai import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). A detailed description of all SVs used to value Muyun's reported FOPs may be found in the Preliminary Results Surrogate Value Memo.<sup>84</sup>

For the preliminary results, except as noted below, we used data from the Thai import statistics in Global Trade Atlas (GTA) and other publicly available Thai sources in order to calculate SVs for Muyun's FOPs (*i.e.*, direct materials and packing materials) and certain movement expenses. The record shows Thai import statistics obtained through GTA are contemporaneous with the

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<sup>80</sup> See section 773(c)(4) of the Act.

<sup>81</sup> See section 773(c)(3) of the Act.

<sup>82</sup> See Section C & D Response available at Data Release Memo at Attachment 2

<sup>83</sup> See, *e.g.*, *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and the accompanying Issues and Decision Memorandum at Comment 2.

<sup>84</sup> See memorandum to the File, regarding "Preliminary Results of the New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Surrogate Value Memorandum," dated December 14, 2018 (Preliminary Results Surrogate Value Memo).

POR, product-specific, representative of a broad market average, publicly available and duty and tax-exclusive.<sup>85</sup>

Furthermore, with regard to Thai import-based SVs obtained through GTA, in accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988 and longstanding agency practice, Commerce disregarded prices that it has reason to believe or suspect may be subsidized.<sup>86</sup> In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>87</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from India, Indonesia, South Korea and Thailand in calculating the Thai import-based SVs. Additionally, consistent with our practice, we disregarded prices from NME countries.<sup>88</sup> Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, because Commerce could not be certain that they were not from either an NME country or a country with generally available export subsidies.<sup>89</sup>

On June 21, 2011, Commerce announced a new methodology to value the cost of labor in NME countries.<sup>90</sup> In Labor Methodologies, Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.<sup>91</sup> Additionally, Commerce determined that Chapter 6A: Labor Cost in Manufacturing, from the International Labour Organization (ILO) Yearbook of Labour Statistics (Yearbook), as compared

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<sup>85</sup> See Surrogate Value Comments at Exhibit 1 available at Data Release Memo at Attachment 9; *see also* AR4 SV Comments at Exhibit 5, available at Data Release Memo at Attachment 10.

<sup>86</sup> See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

<sup>87</sup> See *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

<sup>88</sup> See *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009).

<sup>89</sup> *Id.*

<sup>90</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (Labor Methodologies). This notice followed the Court of Appeals for the Federal Circuit decision in *Dorbest Ltd. v. United States*, 604F.3d 1363, 1366 (CAFC 2010) (finding that the “[regression-based] method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted to be used by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. § 1677b(c))}”).

<sup>91</sup> See Labor Methodologies, 76 FR at 36093.



to Chapter 5B data of the ILO Yearbook, is the preferred source where another source is not more appropriate.<sup>92</sup>

In these preliminary results, Commerce calculated the labor input using data from the 2013 Industrial Census data published by Thailand's National Statistics Office (the 2013 NSO data).<sup>93</sup> Although the 2013 NSO data are not from the ILO, Commerce finds that this fact does not preclude us from using this source for valuing labor. In Labor Methodologies, Commerce decided to change the use of the ILO Chapter 6A data from the use of ILO Chapter 5B data on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.<sup>94</sup> Commerce did not, however, preclude all other sources for evaluating labor costs in NME antidumping proceedings. Rather, consistent with section 773(c)(1) of the Act, we continue to follow our practice of selecting the "best available information" to determine SVs for inputs, such as labor. In this case, we find that the 2013 NSO data are the best available information for valuing labor for this segment of the proceeding. The NSO data are industry-specific, and reflect all costs related to labor, including wages, benefits, housing, and training. For these preliminary results, we have calculated the wage rate as 41.82 Baht/hour. A more detailed description of the wage rate calculation methodology is provided in the Preliminary Results Surrogate Value Memo.

Commerce determined the best available information for valuing truck freight to be from the World Bank's report, *Doing Business 2015: Thailand*.<sup>95</sup> This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the economy's largest business city (Bangkok) to the country's major port.<sup>96</sup> We calculated a per-kilogram/per-kilometer surrogate inland freight rate of \$.0000577 per-kilogram/per-kilometer based on using the full capacity of a 20-foot container as reported in the World Bank report.<sup>97</sup> We did not inflate these prices when they were contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand.<sup>98</sup> The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in the World Bank's *Doing Business 2015: Thailand*.<sup>99</sup> We calculated a brokerage and handling rate of \$.0115 per-kilogram.<sup>100</sup> We did not inflate these prices when they were contemporaneous with the POR.

We valued electricity using an average price of energy to various customers as published by the Electricity Generating Authority of Thailand.<sup>101</sup>

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<sup>92</sup> *Id.*

<sup>93</sup> See Preliminary Results Surrogate Value Memo.

<sup>94</sup> See Labor Methodologies, 76 FR at 36093.

<sup>95</sup> See Preliminary Results Surrogate Value Memo.

<sup>96</sup> See Surrogate Value Comments at Exhibit SV-17 available at Data Release Memo at Attachment 9.

<sup>97</sup> See Preliminary Results Surrogate Value Memo.

<sup>98</sup> *Id.*

<sup>99</sup> See Surrogate Value Comments at Exhibit SV-17 available at Data Release Memo at Attachment 9.

<sup>100</sup> See Preliminary Results Surrogate Value Memo.

<sup>101</sup> *Id.*

According to 19 CFR 351.408(c)(4), Commerce is directed to value manufacturing overhead, selling, general and administrative expenses (SG&A), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. As stated above, we determined to use Thailand as the primary surrogate country. The record contains one audited and fully translated financial statement to value factory overhead, SG&A and profit: the 2014 financial statements for Neotech Plywood Co., Ltd., a producer of comparable merchandise. Commerce has moved the 2014 financial statements for Neotech Plywood Co., Ltd., onto the record of this review from the concurrent fourth administrative review of MLWF from China.<sup>102</sup>

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* Preliminary Results Surrogate Value Memo.

### *Currency Conversion*

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rate in effect on the date of Muyun's U.S. sale as certified by the Federal Reserve Bank.

### *Section 777A(f) of the Act*

In applying section 777A(f) of the Act, Commerce examined: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.<sup>103</sup> For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.<sup>104</sup> In conducting this analysis, Commerce has not concluded that concurrent application of NME antidumping and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute. Because Muyun did not submit information to support an adjustment, Commerce is preliminarily not making adjustments pursuant to section 777A(f) of the Act to the antidumping duty cash deposit rate found for Muyun in this NSR.

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<sup>102</sup> See AR4 SV Comments at Exhibit 5, available at Data Release Memo at Attachment 10; *see also* Preliminary Results Surrogate Value Memo.

<sup>103</sup> See section 777A(f)(1)(A)-(C) of the Act.

<sup>104</sup> See section 777A(f)(1)-(2) of the Act.

## RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

12/14/2018

X



Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance