A-570-092
Investigation
POI: 01/01/2018 – 06/30/2018
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October 17, 2019

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that mattresses from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 731 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents subject to this investigation are Healthcare Co., Ltd. (Healthcare) and Zinus (Xiamen) Inc. (Zinus).

As a result of our analysis, we made changes to the preliminary margin calculations for Healthcare and Zinus. We are also continuing to apply the China-wide entity rate of 1,731.75 percent which Commerce is able to corroborate using margins calculated for the mandatory respondents. Below is the complete list of the issues in this investigation for which we received comments from interested parties:

General Issues
Comment 1: Whether Commerce Should Adjust the Critical Circumstances Analysis
Comment 2: Whether to Allow the Inclusion of Cash Deposits for the 90-Day Retroactive Period
Comment 3: Whether Commerce Should Take into Consideration the Claimed Impact of Section 301 Tariffs on the Critical Circumstances Surge Analysis
Comment 4: Whether the China-wide Entity Rate is Corroborated and Reasonable
Comment 5: Whether Commerce Should Rely on Malaysia or Mexico as the Surrogate Country
Comment 6: Whether Commerce Should Remove Luxury Sleep's Distribution Costs from the Financial Ratio Calculation

Comment 7: Whether Commerce Should Average the Luxury Sleep and Aerofoam Financial Statements

Healthcare Issues
Comment 8: Whether Commerce Should Apply AFA to Healthcare
Comment 9: Whether Commerce Should Allow an Adjustment for Healthcare's Freight Revenue
Comment 10: Whether Commerce Should Re-Calculate Healthcare's Indirect Selling Expense Ratio

Zinus Issues
Comment 11: Surrogate Values for Certain Zinus Inputs
Comment 12: Zinus' Per-Unit Calculation of Water
Comment 13: Zinus' Direct Expenses Calculation
Comment 14: Zinus' Cash Deposit Instructions

After analyzing the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

A. Case History

On June 4, 2019, Commerce published its *Preliminary Determination*.[2] On July 10, 2019, Commerce published its *Amended Preliminary Determination* for this investigation and invited interested parties to comment.[3]

Between June 10, 2019, and July 17, 2019, Commerce conducted verifications of Healthcare's and Zinus' questionnaire responses.[4]

On August 20, 2019, Ashley Furniture Industries, Inc. (Ashley Furniture),[5] Atlantic Furniture

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[1] *See Mattresses from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 84 FR 25732 (June 4, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *Id.*
[3] *See Mattresses from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 84 FR 32867 (July 10, 2019) (*Amended Preliminary Determination*) and accompanying PDM.
[4] *See* Memorandum, "Verification of Factors of Production and Sales Response of Healthcare Co., Ltd. in the Antidumping Investigation of Mattresses from the People's Republic of China," dated July 17, 2019; *see also* Memorandum, "Verification of the Questionnaire Responses of Zinus (Xiamen) Inc. and Zinus Inc. (Korea) in the Antidumping Investigation of Mattresses from the People's Republic of China," dated August 5, 2019.
[5] *See* Letter from Ashely Furniture, "Mattresses from the People's Republic of China: Case Brief," dated August 20, 2019 (Ashley Furniture Case Brief).

Inc., (Atlantic Furniture),[6] Classic Brands, LLC (Classic Brands),[7] Modway Inc. (Modway),[8] ZMM Services Inc., (ZMM),[9] Zinus,[10] and the petitioners,[11] filed their case briefs. On August 26, 2019, Healthcare,[12] Zinus,[13] and the petitioners[14] filed their rebuttal briefs.

During the course of this investigation Commerce received scope comments from interested parties. Based on these comments and a proposed scope exclusion for convertible furniture products also referred to as "convertible sofas" or "sofa beds," we have revised the scope of this investigation to exclude these products.[15] *See* Section III below for a complete discussion.

Based on the results of the verifications of Healthcare and Zinus, and our analysis of the comments received, we made certain changes to our *Preliminary Determination*.

B. Period of Investigation

The period of investigation (POI) is January 1, 2018, through June 30, 2018.

III. SCOPE COMMENTS

As explained above, during the course of this investigation Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments and set aside a period of time for parties to address scope issues in scope case and rebuttal briefs.[16] On July 5, 2019, we received scope comments from Innovation

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[6] *See* Letter from Atlantic Furniture, "Administrative Case Brief: Less-Than-Fair Value Investigation, Mattresses from the People's Republic of China," dated April 20, 2019 (Atlantic Furniture's Case Brief).
[7] *See* Letter from Classic Brands, "Mattresses from the People's Republic of China: Case Brief," dated August 20, 2019, (Classic Brands Case Brief).
[8] *See* Letter from Modway and ZMM, "Administrative Case Brief: Less-Than-Fair Value Investigation, Mattresses from the People's Republic of China," dated April 20, 2019 (Modway Case Brief).
[9] *Id.*
[10] *See* Letter from Zinus, "Mattresses from the People's Republic of China: Zinus's Case Brief," dated August 20, 2019 (Zinus Case Brief).
[11] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Case Brief on Behalf of Mattress Petitioners," dated August 20, 2019 (Petitioners' Case Brief). The petitioners in this investigation are Corsicana Mattress Company, Elite Comfort Solutions, Future Foam Inc., FXI, Inc., Innocor, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated, Serta Simmons Bedding, LLC, and Tempur Sealy International, Inc. (the petitioners).
[12] *See* Letter from Healthcare, "Mattresses from the People's Republic of China: Rebuttal Brief," dated August 26, 2019 (Healthcare Rebuttal Brief).
[13] *See* Letter from Zinus, "Mattresses from the People's Republic of China: Zinus Rebuttal Brief," dated August 26, 2019 (Zinus Rebuttal Brief).
[14] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Rebuttal Brief on Behalf of Mattress Petitioners," dated April 26, 2019 (Petitioners' Rebuttal Brief).
[15] *See* Letter from Target General Merchandise Inc. and Ashley Furniture, "Mattresses from the People's Republic of China: Scope Exclusion Proposal," dated August 19, 2019; *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Petitioners' Response to Scope Exclusion Request of Target General Merchandise and Ashley Furniture," dated August 21, 2019.
[16] *See* Memorandum, "Mattresses from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated May 28, 2019 (Preliminary Scope Memorandum); and *Preliminary Determination*, and accompanying PDM at 9.

Living, Inc. regarding convertible furniture products also referred to as "convertible sofas" or "sofa beds."[17] Further, on August 19, 2019, we received a scope exclusion request from interested parties proposing to exclude convertible furniture products.[18] On August 21, 2019, we also received a letter from the petitioners agreeing to the proposed scope exclusion regarding convertible furniture products.[19] Based on these comments and because interested parties agree to exclude convertible furniture products also referred to as "convertible sofas" or "sofa beds," we have revised the scope of this investigation to include the following language:

> Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are integrated into the design and construction of, and inseparable from, the furniture framing. Such furniture may, and without limitation, be commonly referred to as "convertible sofas," "sofa beds," "sofa chaise sleepers," "futons," "ottoman sleepers" or a like description.

See this memorandum's accompanying *Federal Register* notice at Appendix I for the revised scope.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are mattresses. For a complete description of the scope of the investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

V. CHANGES FROM THE PRELIMINARY DETERMINATION

We adjusted Healthcare's reported indirect selling expenses (ISE). We also adjusted both Healthcare's factors of production (FOP) and U.S. sales databases based on the minor corrections submitted at verification[20] and made certain adjustments based on Commerce's

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[17] *See* Letter from Innovation Living, Inc., "Mattresses from the People's Republic of China: Scope Brief Addressing Preliminary Scope Determination," dated July 5, 2019 and "Mattresses from the People's Republic of China: Redacted Scope Brief Addressing Preliminary Scope Determination," dated July 31, 2019.

[18] *See* Letter from Target General Merchandise Inc. and Ashley Furniture, "Mattresses from the People's Republic of China: Scope Exclusion Proposal," dated August 19, 2019.

[19] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Petitioners' Response to Scope Exclusion Request of Target General Merchandise and Ashley Furniture," dated August 21, 2019.

[20] *See* Memorandums, "Verification of Factors of Production and Sales Response of Healthcare Co., Ltd. in the Antidumping Investigation of Mattresses from the People's Republic of China," dated July 17, 2019 (Healthcare Verification Report); and Memorandum, "Verification of Sales Response of Healthcare Co., Ltd. in the Antidumping Investigation of Mattresses from the People's Republic of China," dated July 29, 2019 (Healthcare CEP Verification Report). *See also* Letter from Commerce, "Antidumping Duty Investigation of Mattresses from the People's Republic of China: Post-Verification Request for a Revised Factors of Production Database and U.S. Sales Database from Healthcare Co. Ltd.," dated August 1, 2019, at Attachment I; and Letter from Healthcare, "Mattresses from the People's Republic of China: Response to the Post-Verification Request for a Revised FOP's Database and U.S. Sales Database," dated August 5, 2019.

findings at verification.[21] We adjusted certain Malaysia HTS classifications related to Zinus' FOP and adjusted Zinus' FOP database and U.S. sales database based on the minor corrections submitted at verification.[22]

VI. ANALYSIS OF COMMENTS

General Issues

Comment 1: Whether Commerce Should Adjust the Critical Circumstances Analysis

A. Whether to Infer Critical Circumstances to Separate Rate Companies when Commerce did not Use Separate Rate Company Data

Classic Brands, LLC Case Brief:

- Commerce based the massive imports analysis of separate rate companies on Global Trade Atlas (GTA) Data less shipment data related to mandatory respondents. By doing so Commerce captures neither the experience of the separate rate companies nor the mandatory respondents.[23]
- Section 733(e)(1) of the Act does not specify how Commerce is to determine whether importers knew or should have known that the exporter was selling the subject merchandise at less than its fair value or whether there have been massive imports of the subject merchandise over a relatively short period. Accordingly, Commerce is accorded discretion in adopting a methodology to asses these factors; but Commerce's approach must be reasonable.
- Commerce used the experiences of the two mandatory respondents to determine whether importers knew or should have known that those producers and/or exporters were dumping (imputing knowledge). However, Commerce analyzed whether imports have been massive by using GTA Data less mandatory respondents' data. By doing so, Commerce used neither the mandatory respondents' or separate rate company's experiences to analyze whether shipments have been massive.
- Because Commerce did not request shipment data from separate rate companies, Commerce should use the shipment data of the mandatory respondents in its massive imports analysis.
- Commerce inferred adversely that there were massive imports for the China-wide entity on the basis of GTA Data. It would be improper to impute those adverse inferences of massive imports to the separate rate companies that fully cooperated with Commerce.[24]

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[21] *See* Healthcare Verification Report, Healthcare CEP Verification Report, and Memorandum, "Final Determination in the Antidumping Duty Investigation of Mattresses from the People's Republic of China: Analysis Memorandum for Healthcare Co., Ltd.", dated concurrently with this memorandum (Healthcare Final Analysis Memorandum).
[22] *See* Memorandums, "Verification of the Questionnaire Responses of Zinus (Xiamen) Inc. and Zinus Inc. (Korea) in the Antidumping Investigation of Mattresses from the People's Republic of China," dated August 5, 2019 (Zinus Verification Report) and "Constructed Export Price Verification of the Questionnaire Responses of Zinus (Xiamen) Inc. in the Antidumping Investigation of Mattresses from the People's Republic of China," dated August 8, 2019 (Zinus CEP Verification Report).
[23] *See* Classic Brand Case Brief at 2.
[24] *Id*. at 6.

- For the above reasons Commerce should use the mandatory respondents' shipment data for its massive imports analysis and find that critical circumstances do not exist for the separate rate companies.

B. Whether to Include Additional HTS Subheadings

Modway and ZMM Case Briefs:

- Commerce failed to include all HTS numbers in its critical circumstances analysis when it did not take into account imports of HTS subheadings 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081.
- The HTS subheadings contain subject merchandise and as such, Commerce should include imports of these HTS numbers both before and after the initiation.[25]
- The HTS subheadings 9404.21.0095, 9404.29.1095, and 9404.29.9095 (the "Other" headings) are not basket categories. Rather, they are 10-digit HTS statistical subheadings, which fall under the superior subheading for "mattresses", and which encompass mattresses (and no other products), except those that are specifically provided for in other statistical subheadings (*i.e.*, mattresses for use in a crib or toddler bed and mattresses of a width exceeding 91 cm, of a length exceeding 184 cm, and a depth exceeding 8 cm).
- Merchandise classified as "seats other than garden seats or camping equipment, convertible into beds" under HTS subheading 9401.40.0000 is also covered by the plain language of the scope. In this regard, the scope encompasses mattresses imported "as part of furniture or furniture mechanisms (*e.g.*, convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms. . .)" and the tariff term "seats" includes "sofas." Thus, subheading 9401.40.0000 merchandise clearly falls squarely within the scope, and also should be included in Commerce's critical circumstances analysis for the final determination.[26]
- While 9401.90.5081 encompass other parts of set, whether or not convertible into beds, and could also include subject merchandise, all parties agree there were no imports of this HTS number.
- To not include the HTS subheadings results in an arbitrary and results-driven process that is not supported by substantial record evidence.
- Both of the mandatory respondents as well as other respondents had entries of merchandise under the above HTS subheading numbers. Thus, when Commerce deducted the mandatory respondents' import statistics when analyzing the separate rate and China-wide entity critical circumstances, Commerce deducted HTS subheading imports which skewed the results of the critical circumstances analysis.
- Using all HTS numbers, including these HTS subheadings, in the massive imports analysis results in an increase of only 10.50 percent during the relatively short period, well below the 15 percent threshold required by 19 CFR 351.206(h)(2).

[25] *See* Modway Case Brief at 1.
[26] *Id*. at 6.

- Commerce's practice is to include all HTS numbers in its critical circumstances analysis.[27]

Atlantic Furniture, Grand Life Inc., Grantec (Zhangzhou) Co., Ltd., and Home Furnishings Resource Group Case Briefs:

- Commerce failed to include all scope HTS numbers in its critical circumstances analysis when it did not take into account imports of HTS subheadings 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081.
- Omission of these HTS subheadings from its analysis stands in stark contrast from the record evidence that shows certain respondents entered subject merchandise under these HTS subheadings during the POI and prior to the filing of the Petition.[28]
- Commerce must include these five HTS subheadings to conform with its statutory obligation and practice of analyzing "all available" data.

Ashley Furniture Case Brief:

- Commerce failed to include all scope HTS numbers in its critical circumstances analysis when it did not take into account imports of HTS subheadings 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081.
- Commerce included all HTS numbers in the scope relied upon at initiation.[29]
- Subject merchandise entered under all HTS numbers of the scope.
- Though Commerce's justification for ignoring the additional HTS codes was consistent with the initiation, neither the statute nor Commerce's own regulations require it to maintain consistency with the initiation of an investigation when analyzing allegations of critical circumstances.
- Commerce is required to perform an analysis that examines the record as a whole including evidence that fairly detracts from the weight of the evidence upon which it does rely; Commerce failed to do so when it incorrectly excluded important data from its analysis.
- Commerce conducted an improper determination of critical circumstances because it failed to use data from all HTS numbers and provide participants with the requisite "reasonably discernable" path for the agency's decision. *NMB Sing. Ltd v. United States*, 557 F.3d 1316, 1320 (Fed. Cir. 2009) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
- Commerce had before it information that would have resulted in a different outcome had it utilized the proper methodology including all relevant HTS classifications.

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[27] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-19 (August 4, 2004) (*Shrimp from India*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004)); *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) (*Television Receivers from China*), accompanying Issues and Decision Memorandum (IDM) at Comment 3.
[28] *See* Atlantic Furniture Case Brief at 7.
[29] *See* Ashley Furniture's Case Brief.

- By properly including the trade data for HTS 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081, the increase in the volume of subject merchandise in the period relied on by the petitioners in the critical circumstances allegation shows an increase of only 10.50 percent, which is below the 15 percent threshold required to find massive imports in a critical circumstances analysis.
- Commerce should not have expanded the critical circumstances analysis period from three to five months and Commerce provided no reason why it expanded the period.

C. Whether to Expand the Comparison and Base Periods to Include Data up to the Preliminary Determination

Modway and ZMM Case Brief:

- Commerce's normal practice is to use all available data up to the preliminary determination in conducting a critical circumstances analysis.[30]
- Commerce must base its critical circumstances analysis on all available data which includes an eight month comparison period from October 2018 to May 2019 and an eight month base period of February 2018 to September 2018.
- Consistent with its practice, Commerce should use the same comparison period for the separate respondents and the PRC-wide entity as it does for the mandatory respondents.

Atlantic Furniture, Grand Life Inc., Grantec (Zhangzhou) Co., Ltd., and Home Furnishings Resource Group Case Brief:

- Commerce should, in its final critical circumstances analysis, expand the comparison and base period to include the months up to the date of the *Preliminary Determination*, consistent with agency practice.

D. Whether to Use U.S. Census Bureau United States International Trade Commission (USITC) Data for the Critical Circumstances Analysis

Modway and ZMM Case Brief:

- Commerce incorrectly used GTA Data in its critical circumstances analysis when both the petitioners and Healthcare Co., Ltd., Sinomax Macao Commercial Offshore Limited, Ningbo Shuibishen Home Textile Technology Co., Ltd., and Luen Tai Global Limited and Luen Tai Group (China) Limited (i.e., Steptoe Respondents) used USITC Dataweb statistics.
- Commerce should use USITC Dataweb statistics for its critical circumstances analysis in the final determination due to significant differences in the monthly values reported by GTA Data and USITC Dataweb statistics.
- GTA Data either has significant errors that must be corrected or the GTA data includes more than just imports for consumption (potentially general import data not released for consumption into the United States).

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[30] *See Television Receivers from China, and accompanying IDM* at Comment 3 (citing *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicon Metal from the Russian Federation*, 67 FR 59253, 59256 (September 20, 2002)).

- Commerce should utilize only the "imports for consumption" provided by USITC Dataweb. This data source is consistent with petitioners' and Steptoe Respondents' submissions and represents actual imports released into the U.S. market.

Atlantic Furniture, Grand Life Inc., Grantec (Zhangzhou) Co., Ltd., and Home Furnishings Resource Group Case Brief:

- Commerce should use official U.S. Census Data covering imports for consumption as provided by the USITC.

Petitioner's Rebuttal Brief:

- USITC Dataweb statistics demonstrated a surge in imports comparing the base period of July to September 2018 to October to December 2018 of 31.24 percent. Removal of the Zinus and Healthcare shipments from the USITC Dataweb totals increases the surge dramatically.[31]
- Commerce conducted its critical circumstances analysis pursuant to section 733(e)(l)(B) of the Act and 19 CFR 351.206(c)(2)(i), following its normal practice of using GTA Data for HTS subheadings 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Expanding to use a five-month analysis period, Commerce confirmed the existence of massive imports and appropriately applied adverse facts available (AFA) to the China-wide entity.
- Despite claims from Modway, the petitioners requested that Commerce use GTA Data for HTS subheadings 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Commerce's practice is to use GTA Data specific to the merchandise covered by the scope of the investigation.[32]
- A five-month comparison period is consistent with Commerce practice because it must use "comparison periods of no less than three months."[33]
- Commerce properly took into account all available information on the record and reviewed the petitioners' critical circumstances allegation, and found it was proper to use the six subheadings that cover properly classified mattresses.

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[31] *See* Petitioners' Rebuttal Brief at 23 for the increase in the surge percentage which is proprietary.

[32] *See, e.g.*, *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 16322 (April 16, 2018), and accompanying IDM at 4; *Citric Acid and Certain Citrate Salts from Thailand: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part*, 83 FR 25998 (June 5, 2018), and accompanying IDM at 8 ("it is Commerce's practice to rely upon Global Trade Atlas (GTA) import statistics specific to {subject merchandise}, less the mandatory respondents' reported shipment data, to determine if imports in the comparison period for the subject merchandise were massive").

[33] *See, e.g., Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation, and Amendment to the Scope of the Preliminary Determination in the Countervailing Duty Investigation*, 83 FR 45217 (September 6, 2018), and accompanying IDM ("it is Commerce's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months. Therefore, we selected a five-month base period"); *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017), and accompanying IDM at 3.

- The inclusion of primarily non-subject merchandise under HTS subheadings 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081 in the critical circumstances analysis does not change the result that there was a massive increase in subject merchandise after the filing of the petition.
- The plain language of the scope explains that mattresses are identifiable under HTS subheadings 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. The five HTS subheadings that Modway argues Commerce should include in its critical circumstances analysis are most likely non-subject merchandise since Modway explains that products subject to the petition "may" enter under these HTS numbers.
- Definitions provided by the petitioners in their Critical Circumstances Allegation show that HTS subheadings 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081 contain non-subject merchandise.[34]
- The "95" subheadings are "Other" categories where mattresses that are included in the scope may be misclassified, but they also include non-subject merchandise. Nevertheless, if the "95" subheadings were to be included, there would still be a massive increase in imports of subject merchandise - a surge of 16.4 percent by volume and 27.5 percent by value – well over the 15 percent threshold required in 19 CFR 351.206(h)(2).[35]
- Items that are imported under 9401.40.0000 have included futon frames, air mattresses, ottomans (this included a mattress), and inflatable couches.[36]
- Modway's claim that Commerce erroneously rejected the excluded HTS subheadings is misplaced.[37]
- The GTA Data demonstrate that imports of the subject merchandise surged over a relatively short period of time in relation to prior import levels and, more importantly, that these "surges" are beyond the fifteen percent threshold established by 19 CFR 351.206(h)(2). The significant increase in imports is indicative of importers building inventory of mattresses in the United States in order to avoid the imposition of antidumping duties. Commerce should find that the requirements of section 733 (e)(1)(B) of the Act are met in its final determination.

Commerce's Position: For the final determination, we continue to find that critical circumstances exist for the China-wide entity and the separate rate companies. Additionally, we have based our analysis for the "massive imports" determination for the separate rate respondents on total Chinese imports less Healthcare and Zinus shipments. We also continue to only use the HTS subheadings 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087 for our massive imports analysis because these HTS numbers include exclusively subject merchandise. We also continue to use GTA Data in our analysis. Finally, pursuant to Commerce's practice, we have expanded the base and comparison periods from five months to eight months.

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[34] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Re-Filing of Petitioners' Response to Healthcare's Comments on the Critical Circumstances Allegation," dated April 3, 2019, at 3.
[35] *See* Mattresses from the People's Republic of China: Re-Filing of Petitioners' Response to Healthcare's Comments on the Critical Circumstances Allegation at Exhibit 1.
[36] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Re-Filing of Petitioners' Response to Healthcare's Comments on the Critical Circumstances Allegation at Exhibit 2.
[37] *See* Petitioners' Rebuttal Brief at 29 for the proprietary arguments from the petitioners with regard to this point.

Section 735(a)(3) of the Act provides that, if the final determination is affirmative, for any investigation in which critical circumstances has been alleged under section 733(e) of the Act, Commerce shall also make a final determination with regard to critical circumstances. Section 735(a)(3) of the Act provides that Commerce will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

There is no evidence of a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise pursuant to section 735(a)(3)(A)(i) of the Act.[38] In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less-than-fair-value (LTFV) and that there was likely to be material injury by reason of such sales pursuant to section 735(a)(3)(A)(ii) of the Act, Commerce must rely on the facts before it at the time the determination is made. For the *Preliminary Determination*, we based our decision with respect to knowledge on the margins calculated in the *Preliminary Determination* and the International Trade Commissions (ITC's) preliminary injury determination.[39] Commerce normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.[40]

We calculated margins in the *Amended Preliminary Determination* for Healthcare of 69.30 percent and in the *Preliminary Determination* for Zinus of 84.64 percent.[41] Additionally, the ITC found in its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by imports of mattresses from China. Further, for the final determination, we continue to calculate margins far in excess of the 25 percent required to impute knowledge in EP sales and the 15 percent required to impute knowledge in regard to CEP sales. In accordance with our practice, we find that the knowledge requirement, pursuant to section 735(a)(3)(A)(2) of the Act, has been satisfied.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h), Commerce normally compares the

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[38] *See* Memorandum, "Preliminary Affirmative Determination of Critical Circumstances," dated May 28, 2019, at 4.
[39] *Id.* at 4-6.
[40] *See*, *e.g.*, *Carbon and Alloy Steel Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002)); and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003) (unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).
[41] *See Amended Preliminary Determination*.

import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e*., the "base period") to a comparable period of at least three months following the filing of the petition (*i.e*., the "comparison period").[42] Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[43]

With regard to Classic Brands' argument that Commerce should use Healthcare's and Zinus' shipment data to determine whether imports of mattresses were massive, we disagree.[44] Commerce's practice is to deduct the shipments of mandatory respondents from total imports to determine whether shipments have been massive for non-individually examined respondents.[45] As such, we continue to deduct Healthcare's and Zinus' imports from total imports for our massive shipments analysis.

With regard to the appropriate HTS numbers to use in our analysis, for the final determination, we continue to use the six main HTS subheadings 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Our practice for critical circumstances is to include HTS numbers that are listed in the scope but not to include HTS subheadings that are categories that subject merchandise "may also enter under."[46] The inclusion of HTS subheadings 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081 in the scope is done for import purposes so that importers can process entries in the event some subject merchandise enters under these specific HTS subheadings. While the five HTS subheadings are listed in the scope, these HTS subheadings contain both subject and non-subject merchandise.[47]

Various parties urge that Commerce consider different base and comparison periods in its final critical circumstances determination. It is Commerce's practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.[48] In our *Preliminary Determination,* we used data from October 2018 through

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[42] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at 25.
[43] *See* 19 CFR 351.206(h)(2).
[44] *See* Classic Brands Case Brief at 4.
[45] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019), and accompanying PDM at 10 (unchanged in *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32707 (July 9, 2019)); and *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).
[46] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32707 (July 9, 2019), and accompanying IDM at Comment 3.
[47] *See* Letter from petitioners, "Mattresses from the People's Republic of China: Re-Filing of Petitioners' Response to Healthcare's Comments on the Critical Circumstances Allegation," dated April 3, 2019 (Petitioners' Response) at 4.
[48] *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned*

February 2019, for our comparison period, and data from May 2018 through September 2018, for our base period, in our critical circumstances analysis. The comparison period used by Commerce in its critical circumstances analysis for the non-individually examined respondents should include import data up through May 2019 (the month the preliminary determination was issued) which is consistent with Commerce's practice of using the "longest period for which information is available up to the date of the preliminary determination."[49] Commerce has, in other cases, updated the data used in its critical circumstances analysis after the preliminary determination when additional data were available.[50] Accordingly, we have updated the data used in our critical circumstances analysis, and we are using the February 2018 through September 2018 time period for our base period and October 2018 through May 2019 for our comparison period.

With regard to the source of data to use for our analysis, Commerce continues to use GTA Data for the final determination. Interested parties claim that there are differences between USITC Dataweb data and GTA Data used by Commerce. However, interested parties do not point to any record evidence to demonstrate that GTA Data is flawed and, thus, unusable. Further, Commerce has used GTA Data in numerous recent cases and determines that it is appropriate to do so in this case as well.[51] Therefore, for the final determination, we have continued to use GTA Data in our critical circumstances analysis.

With regard to the two mandatory respondents, based upon the information submitted by Healthcare (*i.e.*, for the base period of February 2018 through September 2018, with the comparison period of October 2018 through May 2019) we do not find massive imports (*i.e.*, an increase greater than or equal to 15 percent between the base and comparison periods), and thus we continue to find that affirmative critical circumstances do not exist for Healthcare, for this final determination.[52] Based upon the information submitted by Zinus (*i.e.*, for the base period

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Warmwater Shrimp from India, 69 FR 47111, 47118-19 (August 4, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004)); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 3.

[49] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying IDM at Comment 10.C.

[50] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019), and accompanying IDM at 6-7; and *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).

[51] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances,* 84 FR 23767 (May 23, 2019) (*Quartz Surface Products from China*), and accompanying IDM at Comment 2; and *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018), and accompanying IDM at Comment 2.

[52] *See* Memorandum, "Calculations for Final Determination of Critical Circumstances in the Antidumping Duty Investigation of Mattresses from the People's Republic of China," dated concurrently with this memorandum (Critical Circumstances Memo).

of February 2018 through September 2018, with the comparison period of October 2018 through May 2019) we do not find massive imports (*i.e.*, an increase greater than or equal to 15 percent between the base and comparison periods), and thus we continue to find that affirmative critical circumstances do not exist for Zinus, for this final determination.[53]

With regard to the separate rate companies, in the *Preliminary Determination* we analyzed GTA Data import statistics specific to mattresses, less the mandatory respondents' reported shipment data, to determine if imports in the comparison period for the subject merchandise were massive.[54] Based on our analysis in the *Preliminary Determination,* we found that imports had been massive over a short period of time (e.g., comparing the base period of May 2018 through September 2018 to the comparison period of October 2018 through February 2019). Apart from expanding the base and comparison periods as described above, Commerce conducted the same analysis for the final determination. Based on this analysis for the separate rate companies we continue to find massive imports (*i.e.*, an increase greater than or equal to 15 percent between the base and comparison periods). Therefore, for the final determination, we continue to find that affirmative critical circumstances exist for the separate rate companies.[55]

Concerning the China-wide entity, we have determined to apply total AFA as described under sections 776(a) and 776(b) of the Act. Thus, for purposes of the "massive" imports analysis, because we lack the necessary reliable shipment data from the China-wide entity, we determine, pursuant to sections 776(a) and 776(b) of the Act, that the China-wide entity shipped mattresses products in "massive" quantities during the comparison period, thereby fulfilling the criteria under section 735(a)(3)(B) of the Act and 19 CFR 351.206(h) and (i). Therefore, we determine that affirmative critical circumstances exist with regard to the China-wide entity.

Comment 2: Whether to Allow the Inclusion of Cash Deposits for the 90-Day Retroactive Period

Classic Brands Case Brief:

- Section 733(e)(2) of the Act permits Commerce to retroactively suspend liquidation of entries up to ninety days prior to the *Preliminary Determination* pursuant to a critical circumstances determination. Commerce implemented this section of the Act in the *Preliminary Determination*.
- However, Commerce does not have the statutory authority to collect cash deposits on entries made or withdrawn from warehouse for consumption during the 90-day retroactive period; Section 733(e)(2) of the Act does not allow for the retroactive collection of cash deposits.
- Because the *Preliminary Determination* does not provide for the collection of cash deposits during the 90-day retroactive period, Commerce's cash deposit instructions are inconsistent with the *Preliminary Determination*.
- While the provision for critical circumstances in a preliminary determination, Section

[53] *Id.*
[54] *See Preliminary Determination* and accompanying PDM at 19-20; *see also* Memorandum, "Preliminary Affirmative Determination of Critical Circumstances," dated May 28, 2019.
[55] *Id*.

773(e)(2) of the Act refers to suspension of liquidation under Section 773(d)(2) of the Act. It does not also refer to collection of cash deposits or other security under Section 773(d)(l) of the Act.

- Commerce's implementing regulations (19 CFR 351.206(d)) similarly only provide for retroactive suspension of liquidation following a critical circumstances determination, *not* retroactive collection of cash deposits.
- Pursuant to the canon *expressio unius est exclusio alteris,* if Congress' intent were to authorize Commerce both to retroactively suspend liquidation *and* to retroactively collect cash deposits on entries subject to a critical circumstances determination, it would have provided so in Section 773(e)(2) of the Act. Because the statute does not so provide, Commerce lacks statutory authority for the retroactive collection of cash deposits for estimated antidumping duties on entries made during the critical circumstances period.
- Commerce addressed this issue in *Certain Quartz Surface Products from the People's Republic of China*,[56] rejecting this argument as a narrow reading of a single provision of the Act without reference to other relevant provisions, namely Sections 735(c)(3)(B) and 735(c)(4)(A) of the Act.[57]
- However, in *Quartz Surface Products from China* Commerce failed to address the relevance of Section 736(a)(3) of the Act, the provision on assessment of duty, which mandates that an antidumping duty order contain, among other things, a directive that "requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited."[58]
- In other words, the Act prescribes the deposit of estimated antidumping duties on entries pending liquidation *at the same time* as payment of estimated normal customs duties but does not provide statutory authority to require cash deposits retrospectively on entries for which normal customs duties have already been paid.
- Moreover, neither of the two provisions Commerce cited in *Quartz Surface Products from China,* Sections 735(c)(3)(B) and 735(c)(4)(A) of the Act, refer specifically to collection of cash deposits retrospectively.[59]
- Accordingly, and to the extent any critical circumstances determination remains applicable, Commerce's instructions to Customs should be revised to reflect that entries made during the critical circumstances period are subject to suspension of liquidation and that Customs is not to retroactively collect cash deposits for estimated antidumping duties, in accordance with law.

Commerce's Position: Section 733(d)(1)(B) of the Act directs that Commerce "shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable." Section 733(d) of the Act provides the general rules for the suspension of liquidation, directing that Commerce "shall order the posting of a cash deposit…" when it makes an affirmative preliminary determination under section 733(b) of the Act. Section 733(e)(2) of the Act provides

[56] *See Quartz Quartz Surface Products from China* and accompanying IDM at 30-32.
[57] *Id.* at 32.
[58] *See* Section 736(a)(3) of the Act.
[59] *See* Sections 735(c)(3)(B) and (c)(4)(A) of the Act.

the specific rule for the suspension of liquidation applicable to an affirmative preliminary determination of critical circumstances in an antidumping duty investigation – specifying that "any suspension of liquidation ordered under subsection (d)(2) shall apply."

Because an affirmative determination of critical circumstances affects the date of applicability of suspension of liquidation under section 733(d)(2) of the Act, the rule for collection of cash deposits is the same as in the event of an affirmative preliminary determination under 733(d)(1)(B) of the Act, *i.e.*, that Commerce "shall order the posting of a cash deposit… for each entry" in the case of an affirmative determination. Additionally, section 735(c)(4)(A) of the Act clearly authorizes Commerce to "continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 733(e)(2)" when Commerce makes a final affirmative critical circumstances determination (emphasis added). Likewise, section 735(c)(3)(B) of the Act specifies that, in the event of a final negative determination of critical circumstances, Commerce should "release any bond or other security, and refund any cash deposit required, under section 733(d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2)." Since section 735(c) of the Act contemplates either 1) continuation of retroactive suspension and posting of a cash deposit in case of an affirmative final determination by Commerce,[60] or 2) the refunding of cash deposits in the case of a negative critical circumstances determination,[61] then clearly Commerce has the authority to collect cash deposits on the retroactively suspended entries in the case of an affirmative preliminary circumstances determination under section 733(e) of the Act. This reading of the relevant provisions of the Act is also consistent with Commerce's long-established practice of instructing U.S. Customs and Border Protection (CBP) to collect cash deposits during the entirety of the suspension of liquidation period.[62]

Classic Brands' argument relies upon a narrow reading of a single provision of the Act without reference to other relevant provisions. Consequently, the argument reaches an incorrect conclusion based upon an incomplete reading of a narrow portion of the statute. As explained above, when read as a whole, the statute directs Commerce to suspend liquidation and collect cash deposits when it reaches a preliminary affirmative determination of critical circumstances. Thus, consistent with the statute and our practice, we have continued to apply cash deposit duties to the separate rate companies and the China-wide entity because we continue to find affirmative critical circumstances.

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[60] *See* section 735(c)(4) of the Act.
[61] *See* section 735(c)(3) of the Act.
[62] *See*, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014); *see also Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008).

Comment 3: Whether Commerce Should Take into Consideration the Claimed Impact of Section 301 Tariffs on the Critical Circumstances Surge Analysis

Ashley Furniture Case Brief:

- The imposition of Section 301 tariffs on three of the HTS numbers covered by the scope is the reason that imports surged after the date of initiation.
- The mattress petition was filed on September 18, 2018, and the Section 301 tariffs, imposed on HTS 9404.21.00, 9404.29.10 and 9404.29.90, were imposed on all products associated with these same HTS numbers on September 24, 2018.
- Hence, the Section 301 Tariffs would generally inflate the trade data Commerce used as a proxy for shipments of subject merchandise.
- For instance, the data relied on by Commerce show the largest volume of trade was in December 2018, before the section 301 duties were due to be increased to 25 percent in January 2019. However, after December 2018, trade volumes returned to a level that is consistent with the pre-petition level. If there were an ongoing effort to enter merchandise before the preliminary determination there is no reason that such an effort would cease in December, when the preliminary determination was not due until February at the earliest and was ultimately extended to June.

Petitioners' Rebuttal Brief:

- Ashley Furniture's argument that an increase in imports after the filing of this petition is the result of Section 301 tariffs is not supported by data showing that shipments of mattresses from China have decreased since the imposition of Section 301 duties in September 2018.
- The ITC examined the impact of Section 301 duties on mattresses in the preliminary phase; most U.S. producers estimated that the duties would likely have no impact on mattress demand or prices in the U.S. market in the future.[63]
- Although importers reported that the Section 301 duties caused an increase in the price of mattresses, and projected that they will continue to increase, several U.S. producers noted that a 10 percent tariff would not be enough to make up for the underselling margin of Chinese imports.[64] The margins determined by Commerce ranged from 258.74 to 1,731.75 percent. The imposition of a 10 percent duty rate will do little to deter shipments from China.
- Not only do official U.S. import statistics show a post-petition massive increase in volume as detailed above, but published reports also indicate that companies greatly increased their mattress shipments from China through October, a month after Section 301 duties went into effect.
- Ashley Furniture's point that Section 301 tariffs "generally inflate{s} the trade data that Commerce is using as a proxy only for shipments of subject merchandise" because the tariffs apply to all products within a given tariff code supports the argument that Commerce should only use the six subheadings used in the Preliminary Determination.

[63] *See Mattresses from China*, Inv. No. 731-TA-1424 (Preliminary), USITC Pub. 4842 at II-13 (November 2018).

[64] *Id. See also id.* at n.17 ("Petitioner Elite Comfort Solutions testified that the difference between the current prices for Chinese mattresses and domestic mattresses 'is so great that the 10 percent, or even 25 percent, Section 301 duty is not going to make a difference.'").

Commerce's Position: We agree with the petitioners. Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

The factors Commerce considers in its critical circumstances analysis pertaining to whether imports of subject merchandise over a relatively short period are massive are set forth in 19 CFR 351.206(h)(1), which enumerates the factors as:

> (i) The volume and value of the imports;
> (ii) Seasonal trends; and
> (iii) The share of domestic consumption accounted for by the imports.

Conspicuously absent from this list are effects of impending tariffs. Commerce has not considered this factor as part of its practice, and it is not found in the enumerated list of factors to be considered in our regulations. Additionally, GTA Data does not include import duties which mean that any section 301 duties are not used in the data Commerce used in the critical circumstances analysis.[65] Consequently, for the final determination, we have not considered the section 301 tariffs in our analysis of critical circumstances.

Comment 4: Whether the China-wide Entity Rate is Corroborated and Reasonable

A. Whether the PRC-Wide Rate is Reasonable

Modway and ZMM Case Briefs:

- The China-wide entity rate is unreasonable, "absurdly high and clearly punitive."[66] The China-wide entity rate must be reduced to comply with applicable legal requirements. Commerce's attempt to corroborate the rate was unreasonable and unlawful.
- The CAFC confirmed that the purpose of AFA and the rate selected is to have a deterrent effect and to provide an incentive to cooperate, not to impose punitive rates. This is the purpose of the statutory corroboration requirement.[67]
- The CAFC recently ruled that Commerce should consider the level of culpability of the uncooperative party and rejected Commerce's' view that it is unnecessary for Commerce to consider surrounding facts and circumstances when selecting an appropriate AFA rate.[68]

[65] *See* Value Definitions at https://www.gtis.com/gta/secure/help/index.html.
[66] *See* Modway Case Brief at 10-12.
[67] *See F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000).
[68] *See BMW of N. Am. LLC v. United States*, 926 F.3d 1291, 1300 (Fed. Cir. 2019).

- The CAFC rejected a rate of 126.44 percent in *BMW*, which was applied to companies that failed to provide a quantity and value questionnaire, the same facts in the instant investigation albeit with a rate that is 13 times greater than *BMW*.
- The U.S. Court of International Trade (CIT) has explained that if Commerce does not corroborate to the extent practicable the AFA rate applied, questions arise about whether the rate applied is punitive.[69]
- The CIT has also held that notwithstanding the Trade Preferences Extension Act of 2015 (TPEA), Commerce cannot assign aberrational AFA rates. Commerce does not have unbounded discretion to choose an AFA rate and "an AFA margin is unsupported by substantial evidence when it is based on an aberrational transaction."[70]
- While the TPEA requires an AFA rate to be reliable and relevant to the proceeding, Commerce selected the highest rate without an evaluation of that rate. Commerce's similar approach in *POSCO* was rejected by the CIT.[71]
- Commerce failed to corroborate the AFA rate when it cited to a memorandum entitled "Corroboration of the Adverse Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Mattresses from the People's Republic of China," which was not placed on the record of this investigation.
- Concerning the reliability and relevancy of the AFA rate, Commerce's AFA rate of 1,731.75 percent is 20 times greater than the highest calculated weighted average rate and vastly exceeds the highest rate ever calculated in any AD case; Commerce's AFA rate cannot be anything other than punitive.
- The highest known AD rate of 457.74 percent was invalidated by the CIT in *Baoding*, where the CIT ruled that the 457.74 percent rate constituted unlawful agency action.[72]
- In *Baoding*, the CIT ruled that Commerce is no less obligated to determine margins as accurately as possible, and it is no less obligated to determine, fairly and equitably, margins that are remedial and not punitive.
- Further, in *Baoding*, the CIT, referring to the 457.74 percent AFA rate, found that the "assignment of so prohibitive a dumping margin . . . as a remedial measure is difficult to comprehend from a commercial or economic standpoint."
- The CIT's justification for rejecting Commerce's 457.74 percent rate in *Baoding* applies in the instant investigation.
- For the final determination Commerce should assign a China-wide entity rate that is not "facially absurd, if necessary, by using an alternative methodology provided by statute to achieve a result which conforms to law."[73]
- While the Act allows Commerce to use the petition rate for the China-wide entity rate, Commerce is precluded from using a rate that is "facially absurd," ***i.e.***, a rate that is twenty times higher than the weighted-average calculated rate.[74]
- Commerce is required by law to apply a reasonable rate with sufficient deterrence built in and Commerce must provide an explanatory evaluation required by the statute.

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[69] *See Tai Shan City Kam Kiu Aluminum Extrusion Co. v. United States*, 58 F. Supp. 3d 1384, 1391 (CIT 2015).
[70] *See Hyundai Steel Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 93, *59-60 (June 28, 2018)
[71] *See POSCO v. United States*, 296 F.Supp.3d 1320, 1349 (CIT 2018)
[72] *See Baoding Mantong Fine Chemistry Co. v. United States*, 113 F. Supp. 3d 1332, 1333-42 (CIT 2015)
[73] *See* Modway Case Brief at 17.
[74] *Id.*

Atlantic Furniture, Grand Life Inc., Grantec (Zhangzhou) Co., Ltd., and Home Furnishings Resource Group Case Brief:

- The 1,731.75 percent rate relies on small quantity and aberrational sales that if individually evaluated would not pass as *bona fide* sales under Commerce's analysis.
- For the final determination, Commerce must select a non-punitive AFA rate that is representative of the overall sales of subject merchandise and consistent with Commerce's statutory mandate.

B. Whether the PRC-Wide Rate is Corroborated

Modway and ZMM Case Brief:

- Commerce cited to transaction-specific margins to corroborate the China-wide entity rate of 1,731.75 percent. However, these transaction-specific margins accounted for a low percentage of the total sales value of Healthcare's sales.[75] In other words, there is nothing "reliable and relevant" or probative about the de minimis and insignificant transactions Commerce used to obtain the punitive 1731.75 percent rate.
- The CIT has held Commerce must do "something more" when the facts of the case indicate that the transaction-specific margins used by Commerce are aberrational or where the remedial measure is so high it is difficult to comprehend.[76]
- Commerce should use more than a 2 percent quantity in its corroboration analysis as anything less would not be probative given the number of aberrational transactions in this investigation.
- Commerce would find the small quantity and distorted transactions on which it based the 1,731.51 percent rate to be non-*bona fide* pursuant to section 751(a)(B)(iv) of the Act; similarly, it would be unreasonable to base an AFA rate on such transactions.
- The Steptoe Respondents incorporate by reference other respondent interested parties' arguments contained in their administrative case briefs.

Atlantic Furniture, Grand Life Inc., Grantec (Zhangzhou) Co., Ltd., and Home Furnishings Resource Group Case Briefs:

- Despite being required by statute, Commerce failed to either explain why the China-wide entity rate was warranted or corroborate the AFA rate based on record evidence.

Ashley Furniture Case Brief:

- Section 776(c) of the Act requires Commerce to corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. To corroborate secondary information, such as the margin used in this case to set the AFA rate, Commerce "shall, to the extent practicable, examine the reliability and relevance of the information to be used."[77]
- While Commerce has great discretion in selecting secondary information to support its

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[75] Due to the proprietary nature of this argument, *see* Memorandum, "Corroboration of the Adverse Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Mattresses from the People's Republic of China: Proprietary Information," dated concurrently with this memorandum (Corroboration Memorandum).

[76] *See Hyundai Steel Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 93, *59-60 (June 28, 2018).

[77] *See* Ashley Furniture Case Brief at 7.

adverse inferences, this discretion is not unbounded.[78]

- The Federal Circuit has addressed this limitation by stating that "when {Commerce} uses secondary information as adverse facts available, that secondary information must reflect an 'estimate' constructed pursuant to the statutory method for calculating dumping margins to meet the corroboration requirement under Section 776 of the Act."[79]
- Because the purpose of the AFA rate is to encourage cooperation, the AFA rate must be a "reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance" and cannot be selected as a punitive and aberrational margin.[80]
- A margin that does not reflect commercial reality is not a "reasonably accurate estimate," and Commerce must tie its AFA rate to the respondent's actual commercial activity.[81]
- The standards of "accuracy" and "commercial reality" "represent reliable guideposts for Commerce's determinations."[82]
- The courts have accordingly rejected exceptionally high AFA margins assigned by Commerce due to lack of evidentiary support of the relationship between the assigned margins and the respondents' commercial reality and pricing behaviors.[83]
- Similarly, the courts have rejected rates assigned by Commerce, even when these rates were within the range of calculated transaction-specific margins, where the rates were deemed aberrational and punitive.[84]
- Further, a mattress sold for $18 in the U.S. "defies logic' and is, thus, not sustainable as a matter of record evidence. The average unit value cited in the petition for all imports of mattresses from China during the POI is $99.51 per unit, more than five times higher than the $18 per unit used to establish the punitive and aberrational AFA rate and is over 20 times higher than the highest calculated margin in this proceeding.[85]
- Commerce's AFA margin, when applied to the average import value supplied by the petitioners ($99), yields a final result of over $1,700 per mattress; this does not represent a "reasonably accurate estimate" of commercial reality.[86]
- As in *Dongguan Sunrise*, the AFA rate in this investigation is unsupported by record evidence because it is neither accurate nor representative of commercial reality and, as in *Shandong Mach.*, is far higher than necessary to encourage compliance.

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[78] *See* F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000)
[79] *See Nan Ya Plastics v. United States*, 810 F.3d 1333, 1342 (Fed. Cir. 2016).
[80] *See De Cecco*, 216 F.3d at 1032.
[81] *See Gallant Ocean (Thail.) Co. v. United States*, 602 F.3d 1319, 1324 (Fed. Cir. 2010).
[82] *See Nan Ya Plastics*, 810 F.3d at 1342.
[83] *See Baoding Mantong Fine Chemistry Co. v. United States*, 113 F. Supp. 3d 1332, 1339 (CIT 2015); *see also Dongguan Sunrise Furniture Co. v. United States*, 997 F. Supp. 2d 1330, 1335 (CIT 2014) (*Dongguan Sunrise*) (noting that the AFA rates determined by Commerce were "not supported by substantial evidence because they are not reflective of {respondent's} commercial reality and are higher than necessary" to encourage compliance.).
[84] *See Shandong Mach. Imp. & Exp. Co. v. United States*, 34 CIT 1001, 1006 (2010) (remanding Commerce's decision to double the AFA rate that was previously deemed sufficient to encourage compliance). The instant proceeding represents an egregious example of a punitive and aberrational AFA margin and the AFA rate must be revised in the final determination to comport with the statute and legal precedent.
[85] *See* Ashley Furniture Case Brief at 9.
[86] *See Dongguan Sunrise*, 997 F. Supp. 2d at 1335.

- As an alternative AFA rate, Commerce could either assign an AFA rate equal to the highest individually-calculated dumping margin for a respondent in this investigation or Commerce could rely on other information in the petition which would fulfill Commerce's mandate to "appropriately balanc{e} th{e} goal of accuracy against the risk of creating a punitive margin,"[87] both of which are more accurate and more reflective of commercial reality.
- Commerce must, however, reject the current AFA rate which is inconsistent with the court's legal standard, logic and record evidence.

Petitioners' Rebuttal Brief:

- Consistent with its statutory obligations, Commerce relied on record evidence to select an appropriate AFA rate and corroborated that the rate has probative value.
- Despite claims that the China-wide entity rate is "unreasonable" and "absurdly high," the China-wide rate, as calculated in the petition, reflects the fact that Chinese producers and exporters have been dumping mattresses into the U.S. market at unprecedented levels.[88]
- The China-wide entity has knowledge that Commerce will choose either the highest margin from the petition or the highest weighted-average calculated rate for any respondent. The China-Wide entity did not cooperate in this investigation. If applying the highest rate did not induce cooperation there is no reason to conclude that applying a lower rate will induce cooperation.
- The China-wide entity rate is not unreasonable or punitive because Commerce "is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an 'alleged commercial reality' of the interested party"[89] because the statute says Commerce "is not required"[90] to consider such estimates or to estimate alleged commercial reality.
- The reliance on the Federal Circuit opinion in *BMW* is misplaced because the circumstances are materially different. In *BMW*, the respondent "was completely unaware that it had an administrative review pending."[91]
- Here, the China-wide entity and non-cooperating respondents that failed to respond to the quantity and value questionnaire had notice and yet still chose to ignore Commerce. The majority in the Federal Circuit opinion in *BMW* expressly stated that "*in large part* because of the procedural anomalies that occurred during the review, the 126.44% rate does not reflect its level of culpability nor its commercial reality."[92] There are no such procedural anomalies for the PRC-wide entity in this investigation.
- Reliance on *Hyundai Steel* to argue that an AFA margin is unsupported by substantial evidence, when it is based on an aberrational transaction, is misplaced. *Hyundai Steel* involved a sale that was "invoiced differently because of the nature of the product."[93]

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[87] *See Timken Co. v. United States*, 26 CIT 1072, 1076 (2002), aff'd 354 F.3d 1334 (Fed. Cir. 2004).
[88] Due to the proprietary nature of this argument, *see* Corroboration Memorandum.
[89] *See Preliminary Determination* and accompanying IDM at 19.
[90] *See* Section 776(d)(3) of the Act.
[91] *See BMW of North America v. United States*, 926 F.3d 1291, 1299 (Fed. Cir. 2019).
[92] *Id.* at 1300.
[93] *See Hyundai Steel Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 93, *59-60 (June 28, 2018).

- Reliance on *Baoding Mantong Fine Chemistry*[94] to discuss "accuracy" and "commercial reality" is misplaced because *Baoding Mantong Fine Chemistry* did not involve AFA.
- The Federal Circuit has held that, "{o}ur case law and the statute thus teach that a Commerce determination (1) is 'accurate' if it is correct as a mathematical and factual matter, thus supported by substantial evidence; and (2) reflects 'commercial reality' if it is consistent with the method provided in the statute, thus in accordance with law."[95] Respondents have not demonstrated that there is a mathematical or factual error or that the calculation is inconsistent with the method provided in the statute.
- Absent the China-wide entity participating in this investigation or not selling mattresses at or below $18 a mattress, Commerce's selection of the highest rate from the petition is consistent with its statutory obligations and longstanding practice.

Commerce' Position: We are continuing to apply the China-wide rate of 1,731.75 percent from the *Preliminary Determination* as AFA for this final determination. For the reasons explained in the *Preliminary Determination*, we continue to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity. In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[96] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.[97] For the final determination, we are assigning the China-wide entity, as AFA, the highest petition margin of 1,731.75 percent. In order to corroborate the highest dumping margin alleged in the Petition,[98] 1,731.75 percent, and to determine its probative value, the Department of Commerce (Commerce) examined (A) the range of individual dumping margins calculated using average-to-transaction (A-to-T) comparisons calculated for Healthcare and Zinus in the final determination of this investigation, (B) the range of individual dumping margins calculated using average-to-average (A-to-A) comparisons calculated for Healthcare and Zinus in this final determination, and (C) the U.S. price and normal value that are the basis of the highest dumping margin alleged in the Petition compared to the U.S. prices reported by Healthcare and Zinus and the normal values calculated for Healthcare and Zinus in this investigation. We are able to corroborate the highest petition dumping margin, to the extent practicable within the meaning of section 776(c) of the Act, using transaction-specific dumping margins, weighted-average

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[94] *See Baoding Mantong Fine Chemistry Co. v. United States*, 113 F. Supp. 3d 1332 (Ct. Int'l Trade 2015).
[95] *See Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1344 (Fed. Cir. 2016).
[96] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland*, 70 FR 28279 (May 17, 2005)).
[97] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.
[98] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Antidumping Duty Petition," September 18, 2018 (Petition) at 38; Letter from the petitioners, "Mattresses from the People's Republic of China: Request for Revised Normal Value and Dumping Margin Calculations," October 2, 2019, at Exhibit 2, Memorandum, "Antidumping Duty Investigation Initiation Checklist," October 9, 2018 (Initiation Checklist) at 10.

dumping margins calculated for Healthcare and Zinus, and Healthcare and Zinus normal values and U.S. prices.

Interested parties submitted comments arguing that the 1,731.75 percent China-wide rate is uncorroborated and unreasonable. They also offer alternative methodologies for calculating the China-wide rate, the results of which, they argue, are consistent with recent CIT and Federal Circuit cases in which the courts have found Commerce failed to demonstrate that application of an adverse facts available rate was not punitive given the relative size of the rate. Commerce has addressed all of these arguments and corroborated the China-wide rate of 1,731.75 percent, distinguishing the instant investigation with the alleged relevant court cases. Due to the proprietary nature of this issue, see the accompanying Corroboration Memorandum for this final determination explaining Commerce's position on this issue in more detail.[99]

Comment 5: Whether Commerce Should Rely on Malaysia or Mexico as the Surrogate Country

Zinus' Case Brief:

- In the *Preliminary Determination*, Commerce selected Malaysia as the primary surrogate country. Commerce should select Mexico as the primary surrogate country. Mexico is economically comparable to China, is a significant producer of subject merchandise and Mexican SVs are superior to Malaysian SVs.
- Petitioners agree that Mexico is an appropriate surrogate country.[100] The production and selling operations of companies with similar market structures will also be similar. Thus, the SVs and financial statements of the surrogate will be similar to the respondent company's FOPs.
- Mexico's market structure most closely approximates that of China. The record indicates that during the POI and in 2017, the United States was by far the most significant export market for both China and Mexico.[101] On the other hand, Malaysian exports of mattresses into the United States were significantly lower.[102]
- The Mexican SVs on the record for Zinus' FOPs are more specific to Zinus' inputs. In the *Preliminary Determination* Commerce incorrectly stated that Malaysian HTS numbers are more specific to the 8- or 10-digit level, while Mexican HTS numbers are only specific to the 6-digit level.[103] However, Commerce resorted to 6-digit HTS codes for valuation of almost half of Zinus' FOPs.[104] On the other hand, Zinus has provided 8-

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[99] *See* Memorandum, "Corroboration of the Adverse Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Mattresses from the People's Republic of China: Proprietary Information," dated concurrently with this notice (Corroboration Memorandum).
[100] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Antidumping Petition," dated September 18, 2018, at Volume 1, page 32.
[101] *See* Zinus' Letter, "Mattresses from the People's Republic of China: Zinus's Final Affirmative Surrogate Value Submission," dated May 2, 2019 (Zinus 5/2/19 SV Submission) at Exhibit SV2-8.
[102] *Id.*
[103] *See Preliminary Determination*, and accompanying PDM at 11.
[104] *See* Memorandum, "Preliminary Determination of the Antidumping Duty Investigation of Mattresses from the People's Republic of China: Surrogate Value Memorandum," dated May 28, 2019 (Prelim SV Memo) at Attachment 2.

or 10-digit Mexican HTS values specific to Zinus' inputs.[105] Finally, the record contains SVs for all other non-raw material inputs, including surrogate financial statements.[106]

- The Financial statement of Tempur-Sealy Mexico is the best available information to value surrogate financial ratios. It is more specific to Zinus' operations because Tempur-Sealy Mexico is a producer of identical merchandise as it produces "bed-in-a-box"[107] and innerspring mattresses. It was also made publicly available at Commerce's request.[108] Commerce should compel the petitioners to place the 2018 Tempur-Sealy Mexico financial statement on the public record of this Investigation as it retains this discretion.[109]
- Commerce should not select Malaysia as the primary surrogate country because there is evidence that the Malaysian economy is distorted due to a number of broadly available export subsidies. Commerce has broad discretion to disregard price or cost values where there is evidence on the record indicating that the data are distorted due to subsidization. Commerce examined a number of Malaysian subsidy programs in prior countervailing duty investigations: Pioneer Status Program, Double Deduction for the Promotion of Exports, and Double Deduction for Insurance Premium on Export Cargo.[110] Commerce should not endorse an economy that is subject to such significant government interference in the market place by finding that it is an appropriate surrogate for a non-market economy.
- Commerce should reject Malaysia because the price of rubber, a key input for mattresses, is distorted due to subsidization and interference in the marketplace. Record evidence establishes that central and local Malaysian government entities engage in extensive subsidization of Malaysian rubber producers, thus, distorting the marketplace.[111] Additionally, the rubber market in southeast Asia is controlled by an extensive cartel, which has significantly distorted the prices for this key input by creating price swings in a short period of time.
- Commerce should reject Malaysia as a Surrogate Country because the Malaysian financial statements are inferior to the Tempur-Sealy Mexico financial statement. In the past, Commerce has rejected a SV data source because the data was sourced from a "subscription-based database."[112] The same is true for both the Aerofoam and Luxury Sleep financial statements, which come from "e-Info," another Malaysian subscription-

[105] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-3.
[106] *Id.* at Exhibit SV2-1.
[107] *Id.* at Exhibit SV2-5.
[108] *See* Supplemental Petition Questionnaire, dated September 25, 2018 at Exhibit 15.
[109] *See Steel Propane Cylinders From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 66675 (December 27, 2018) (*Propane Cylinders Prelim*), accompanying PDM at 11 (unchanged in *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019) (*Propane Cylinders Final*).
[110] *See Certain Frozen Warmwater Shrimp from Malaysia: Final Affirmative Countervailing Duty Determination*, 78 FR 50381 (August 19, 2018) (*Shrimp from Malaysia Final*), accompanying IDM at Comment 1; and *Certain Steel Nails From Malaysia: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 65179 (November 3, 2014) (*Nails Malaysia Prelim*), and accompanying PDM at 6-8.
[111] *See* Zinus' Letter, "Mattresses from the People's Republic of China: Zinus's Surrogate Value Rebuttal Comments," dated March 28, 2019 at Exhibit 1 (Zinus SV Rebuttal).
[112] *See Propane Cylinders Final*, and accompanying IDM at 22.

based database for Malaysian financial statements.[113] If Commerce attempts to access the e-Info system, it will not be able to corroborate the Malaysian financial statements. Therefore, Commerce must choose between using either the publicly-available financial statements of Tempur-Sealy Mexico or Poh Huat.[114]

Petitioners' Rebuttal Brief:

- Commerce correctly found that Malaysia was the appropriate surrogate country in the *Preliminary Determination.* It also correctly found that Malaysian SV data are more specific to the inputs of the mandatory respondents including the contemporaneous surrogate financial statement of a Malaysian producer of identical merchandise.
- Petitioners used Mexico as the surrogate country for normal value purposes in the petition – at a time when they had no knowledge of the number and complexity of material inputs used in mattress production by potential Chinese respondent companies. Furthermore, using one country for purposes of an antidumping petition does not exempt all other potential surrogate countries on Commerce's list of economically-comparable countries from a detailed analysis on the quality and availability of suitable surrogate data. Finally, the list of economically-comparable countries was not on the record at the time of the petition.
- Mexico's market structure is irrelevant in determining an appropriate surrogate country under non-market economy (NME) methodology. The only criterion Commerce considers is whether the surrogate country is a "significant producer of the merchandise under consideration," not the similarity of its export markets or consumer tastes within those markets. It is irrelevant that Mexico's chief export market of mattresses is the United States and it does nothing to prove or further validate the specificity and classifications of the Mexican tariff schedule, which is the foremost concern for Commerce in its surrogate valuation.
- A review of Zinus' SV submissions shows that Zinus only offered Mexican SVs to the 8-digit level of specificity; nowhere did Zinus provide ten-digit specificity in its import statistics as it claimed in its case brief.[115] Furthermore, a large number of Zinus' Mexican HTS numbers are defined as "Other" category or if some are 8-digit categories, they are identical at the 4- or 6-digit specificity. Malaysian HTS categories provide 10-digit level of specificity whereas Mexican HTS provide only 8-digit level. Finally, import values for Mexican HTS classifications for chemicals are aberrational.[116]
- Surrogate financial producer, Aerofoam, is a more appropriate surrogate producer of mattresses than Tempur-Sealy Mexico.[117] Zinus cannot argue that Luxury Sleep and

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[113] *See* Zinus SV Rebuttal; Petitioners' Letter, "Mattresses from the People's Republic of China: Petitioners' Surrogate Values Submission," dated March 18, 2019 at Exhibit 13 (Petitioners' 3/18/19 SV submission); and Zinus 5/2/19 SV Submission at Exhibit SV2-4.

[114] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-4.

[115] *See* Zinus Case Brief at 11; Zinus 3/18/19 SV submission; and Zinus 5/2/19 SV Submission.

[116] *See* Letter from the petitioners, "Mattresses from the People's Republic of China: Petitioners' Rebuttal Comments on Respondents' Surrogate Value Data," dated March 28, 2019 at 3-4; and Petitioners' Rebuttal Brief, "Mattresses from the People's Republic of China: Rebuttal Brief on Behalf of Mattress Petitioners," dated August 26,2019 (Petitioners' Rebuttal Brief) at 36-37.

[117] *See* the petitioners' Letter, "Mattresses from the People's Republic of China: Petitioners' Surrogate Value Factual Information," dated May 2, 2019 at Exhibit 13 (Petitioners' 5/2/19 SV Submission).

Aerofoma financial statements placed on the record by Zinus are not publicly available while Tempur Sealy Mexico's financial statements are. If the Tempur Sealy Mexico financial statement is publicly available because it has been put on the record, then so are the financial statements of Aerofoam and Luxury Sleep.

- Despite Commerce's explicit consideration of subsidy programs and distorted rubber prices at the *Preliminary Determination*, Zinus continues to argue for Malaysia's dismissal as a useable surrogate country based on these allegations. Commerce has previously selected Malaysia as its primary surrogate country.[118] There is no indication that any of Malaysian financial statements contain subsidy programs, thus, deeming them usable. With respect to Zinus' reference to Pioneer Status Program, Double Deduction for the Promotion of Exports, and Double Deduction for Insurance Premium on Export Cargo subsidy programs, Commerce has only found non-use of Pioneer Status Program since 2013, and determined subsidy rates of 0.009 *ad valorem* for Double Deduction for the Promotion of Exports and 0.02 *ad valorem* for Double Deduction for Insurance Premium on Export Cargo.[119] The Court of International Trade (CIT) has held that Commerce "may not rely on *de minimis* export subsidies to disqualify Malaysia from use as a surrogate to calculate foreign market value."[120] Finally, Zinus has put nothing on the record to show that Commerce has found there to be a countervailable subsidy with respect to rubber and, in fact, Commerce has used surrogate value data for rubber from these "cartel" countries in the past.[121]

Commerce's Position: In the *Preliminary Determination*, Commerce selected Malaysia as the primary surrogate country because it is at a level of economic development comparable to China, it is a significant producer of comparable merchandise, and its data are the best available.[122] Specifically, in accordance with section 773(c)(4) of the Act, Commerce values the FOPs in one or more market economy countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise.[123] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the level of economic development of the NME country, but that are still at a level of economic development

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[118] *See Eighth Administrative Review of Certain Activated Carbon from the People's Republic of China: Draft Surrogate Values for Third Remand Redetermination*, 74 FR 57995 (May 6, 2019); *Propane Cylinders Prelim*; *Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 58223 (November 19, 2018).
[119] *See Certain Steel Nails From Malaysia: Final Negative Countervailing Duty Determination*, 80 FR 28968 (May 20, 2015) (*Nails Malaysia Final*), and accompanying IDM at Comment VI(B).
[120] *See China Nat'l Arts and Crafts Imp. and Exp. Corp. v. United States*, 771 F. Supp. 407, 412 (CIT 1991).
[121] *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 61387 (October 9, 2012); and *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61166 (October 9, 2015).
[122] *See Preliminary Determination*, and accompanying PDM at 8-11.
[123] *See* Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004 (Policy Bulletin 04.1).

comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at a similar level of economic development, Commerce generally relies solely on per capita gross national income (GNI) data from the World Bank's *World Development Report*. In addition, if more than one country satisfies the two criteria noted above, Commerce narrows the field of potential surrogate countries to a single country based on data availability and quality. Pursuant to 19 CFR 351.408(c)(2), Commerce "normally will value all factors in a single surrogate country."

Zinus contends that Commerce should select Mexico as the surrogate country.[124] We disagree. First, Zinus argues that the petitioners used Mexico in the petition and agreed that Mexico is an appropriate surrogate country. This, however, has no bearing on selection of the surrogate country in the investigation itself. The fact that the petitioners had proposed Mexico at the petition phase of this investigation does not preclude Commerce from selecting another primary surrogate country. We further note that prior to the initiation of the investigation, the petitioners would not have knowledge of the potential surrogate country list. Further, without knowledge of the respondents' inputs, the petitioners could not choose the appropriate surrogate values. In other words, the petitioners' reliance on a country at the petition phase does not rule out all other potential surrogate countries on Commerce's list of economically comparable countries from further consideration later in a proceeding.

Second, Zinus argues that Mexico's market structure approximates that of China as both these countries are major exporters of comparable merchandise to the United States.[125] Zinus further argues that the United States is the most significant export market for both China and Mexico and engages in a detailed analysis of production, export, import, and consumption data for China, Mexico, and Malaysia in 2017.[126] However, Commerce does not conduct market structure analyses in selecting a primary surrogate country. We note that whether Mexico's market structure approximates the market structure of China is not a relevant factor in determining economic comparability. Instead, Commerce uses per capita gross national income to determine a list of countries that are at the same level of economic development, and Commerce selects a surrogate country from this list.[127] Commerce does not rank these countries and treats each country identified as equivalent in terms of economic comparability.[128] Commerce's analysis of economic comparability, *i.e.,* the first criterion of the surrogate country selection, is based on the per capita gross national income of the country prior to issuance of Commerce's country list.[129] Because Commerce does not evaluate a country's "market structure" beyond determining whether that country is economically comparable to a relevant NME country, we find that the

[124] *See* Zinus Case Brief at 3.
[125] *Id.* at 8-10.
[126] *Id.* at 10.
[127] *See* Policy Bulletin 04.1.
[128] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51439 (October 11, 2018), and accompanying PDM at 6 (unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2016-2017*, 84 FR 7876 (March 5, 2019))
[129] *See* Commerce's Letter, "Antidumping Duty Investigation of Mattresses from the People's Republic of China: Request for Surrogate Country Comments and Information," dated February 6, 2019.

market structure of Mexico and Malaysia are not relevant to Commerce's analysis of the criteria in selection of the primary surrogate country.

Third, Zinus challenges Commerce's preliminary determination that Malaysian HTS numbers are more specific than Mexican HTS numbers.[130] Zinus claims that Mexican HTS numbers are specific to the 8- to 10-digit level, whereas Malaysian HTS numbers are only specific to the 6-digit level. According to Zinus, Commerce resorted to 6-digit HTS codes for half of Zinus' inputs, despite Mexican HTS codes being more specific for the relevant inputs.[131] This is incorrect. Commerce used 10-digit classifications for nearly half of Zinus' inputs, while Mexican HTS numbers do not offer specificity beyond the 8-digit level.[132] Commerce also observes that over one third of Zinus' proffered Mexican HTS numbers are catch-all categories, which do not make them more specific. Finally, in multiple instances, the proffered 8-digit Mexican HTS classifications are identical to Malaysian HTS classifications at the 4th or 6th digit.[133] In other words, 8-digit level HTS categories do not provide additional specificity as they simply repeat the umbrella 4- or 6-digit category.

With respect to the specific inputs listed in the attachment to Zinus' Case Brief, we find that the listed inputs closely match Malaysian SVs. For example, Zinus' M01 input is described as "Methylene chloride" and the selected Malaysian HTS category is "Dichloromethane (Methylene Chloride);" M05 is described as "Castor Oil" and the selected Malaysian HTS category is "Castor Oil And Its Fractions, Whether Or Not Refined But Not Chemically Modified."[134] The first example details similar products. The second example also details similar products because the two descriptions ("Castor Oil" and "Castor Oil And Its Fractions, Whether Or Not Refined But Not Chemically Modified") both describe the main product—castor oil. We reviewed the general record and continue to find that Malaysian SVs are better suited to value the inputs of both respondents. Moreover, Zinus never indicates which inputs are not suitable from Malaysian HTS categories, and Zinus never points to any evidence to explain why specific Mexican SVs are more specific than Malaysian SVs. For example, M01 and M05 are valued by suitable Malaysian SVs in a similar fashion as other SVs listed in Attachment 1 and Attachment 2 of the Prelim SV Memo.[135] We carefully reviewed Zinus' inputs and Malaysian HTS descriptions and find that *in toto* Malaysian categories are more specific than Mexican categories because they provide specificity to the 8- to10-digit level.

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[130] *See* Zinus Case Brief at 11-13.
[131] Zinus Case Brief at 11 (citing *Preliminary Determination*, and accompanying PDM at 11).
[132] Zinus provided an Attachment to its case brief to support its argument that Mexican HTS categories are better suited for its inputs. *See* Zinus Case Brief at Attachment; and Zinus' Letter, "Mattresses from the People's Republic of China: Zinus's Final Affirmative Surrogate Value Submission," dated May 2, 2019 (Zinus 5/2/19 SV Submission) at Exhibit SV2-3.
[133] *See* Zinus Case Brief at Attachment; and Zinus 5/2/19 SV Submission at Exhibit SV2-3.
[134] *See* Memorandum, "Preliminary Determination of the Antidumping Duty Investigation of Mattresses from the People's Republic of China: Surrogate Value Memorandum," dated May 28, 2019 (Prelim SV Memo) at Attachment 1 and Attachment 2.
[135] *See* Prelim SV Memo at Attachment 1 and Attachment 2. For further discussion of HTS categories, see Comment 11 below.

Fourth, Zinus argues that the publicly available Tempur-Sealy financial statement is superior to all Malaysian financial statements.[136] While the Tempur Sealy financial statements indicate that this company produces identical merchandise, the Temper Sealy financial statements are not contemporaneous with the POI, Luxury Sleep also produces identical merchandise and Luxury Sleep's financial statements are contemporaneous with the POI.[137] Furthermore, although financial statements from Luxury Sleep were acquired via a subscription service, Commerce continues to determine that they are publicly available.[138] Similarly, Commerce determines that Zinus' request that Commerce place Tempur-Sealy Mexico's financial statements on the record, so that they would become publicly available is unnecessary. In sum, we have determined that the record of this investigation contains contemporaneous, publicly available financial statements from a producer of comparable merchandise in the primary surrogate country.[139] Therefore, there is no need to open the record and add financial statements from a secondary surrogate country.

Fifth, Zinus argues that Commerce should not select Malaysia as the primary surrogate country because there is conclusive evidence that the Malaysian economy is distorted due to a number of broadly available export subsidies.[140] We initially addressed Zinus' argument regarding export subsidies in the *Preliminary Determination.* Specifically, we stated:

> While Commerce often disregards import prices from countries, including Thailand, India, Indonesia, and South Korea, where there is evidence of broad export subsidies, this practice only pertains to import-based surrogate values. Here, Commerce has followed its practice to disregard such tainted import-based surrogate values.[141]

With respect to Zinus' argument that Malaysia is an inappropriate surrogate country due to previously countervailed programs, we note that these are generally relevant to financial statements containing references to countervailable programs. In other words, Commerce does not rely on financial statements that contain potential subsidies.[142] This is true only with respect to financial statements and not with respect to the entire country as a potential surrogate country, and there are no subsidies in the financial statements of Luxury Sleep that Commerce used in the *Preliminary Determination*.[143] Therefore, we agree with the petitioners that the alleged subsidy programs and distorted rubber prices have no bearing on Commerce's mandate to find a country that is economically comparable, is a significant producer of comparable merchandise, and presents the best available information. Commerce continues to determine that Malaysia is at the

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[136] *See* Zinus Case Brief at 13-17.
[137] For further discussion on selection of financial statement, *see* Comment 7 of this memorandum.
[138] Commerce has determined that data may be publicly available even if it is only accessible through a subscription service. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying IDM at 43.
[139] For additional analysis explaining why Commerce determines Luxury Sleep's financial statements to be the best available information, see Comment 7 below.
[140] *See* Zinus Case Brief at 18-24.
[141] *See Preliminary Determination*, and accompanying PDM at 11.
[142] *See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042 (October 28, 2016), and accompanying IDM at Comment 1.
[143] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-4.

same level of economic development as China, is a significant producer of comparable merchandise, and has reliable and usable SV data.

With respect to Zinus' allegation regarding Malaysian subsidy programs including the Pioneer Status Program, Double Deduction for the Promotion of Exports, and Double Deduction for Insurance Premium on Export Cargo,[144] we again disagree that the Malaysian economy is distorted due to broadly available export subsidies. Specifically, Commerce has only found non-use of the Pioneer Status Program since 2013, and it has only determined *de minimis* subsidy rates of 0.009 *ad valorem* for the Double Deduction for the Promotion of Exports and 0.02 *ad valorem* for the Double Deduction for Insurance Premium on Export Cargo.[145]

Finally, Zinus alleges that prices for rubber, purportedly an important raw material input in subject merchandise, are distorted in Malaysia because the government is controlling prices by providing subsidies.[146] Zinus further alleges that the rubber market in Southeast Asia is controlled by a cartel resulting in "significantly distorted" prices since 2001.[147] We addressed the issue of subsidization in the *Preliminary Determination* and found that the record does not support a finding that rubber subsidization in Malaysia affects surrogate values pertaining to mattress producers.[148] Further, Zinus did not substantiate how alleged subsidization of rubber or latex would taint Malaysian financial statements or deem Malaysia an inappropriate primary surrogate country. While Commerce has in the past determined that there are broad-based subsidies for exports from India, Indonesia, Thailand, and South Korea,[149] and Commerce excludes imports from these countries in the calculation of surrogate values when using import data for other surrogate countries, Commerce has not found that these countries are themselves unsuitable to be a primary surrogate country due to the presence of export subsidies.[150] Similarly, even if prices for rubber in Malaysia are subsidized, something which Zinus has not established, this would not prevent Commerce from relying on Malaysia as the primary surrogate country. Moreover, Zinus offers no support for its argument that broadly available export subsidies would serve to inflate either import or domestic prices in Malaysia. Accordingly, we have continued to use Malaysia as the primary surrogate country in the current investigation.

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[144] *See Shrimp Malaysia Final*; and *Nails Malaysia Prelim* (unchanged in *Nails Malaysia Final*).
[145] *See Nails Malaysia Final*.
[146] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-4.
[147] *See* Zinus Case Brief at 24-28.
[148] *See Preliminary Determination*, and accompanying PDM at 11, 27.
[149] *See, e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Rescission of Review in Part; 2016-2017*, 83 FR 52201 (October 16, 2018), and accompanying PDM at 17 and n.70 (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2016-2017*, 84 FR 2489 (February 7, 2019)).
[150] *See, e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 61387 (October 9, 2012), and accompanying PDM at 14 (Where Commerce used Thai data to value natural rubber) (unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013).

Comment 6: Whether Commerce Should Remove Luxury Sleep's Distribution Costs from the Financial Ratio Calculation

Zinus' Case Brief:

- Commerce incorrectly assigned Luxury Sleep's "Distribution Costs" (*i.e.*, outward freight) to selling, general, and administrative expenses in the calculation of the surrogate selling, general and administrative (SG&A) ratio.[151]
- Deducting freight expenses from U.S. price in Commerce's margin calculations and including "Distribution Costs" in the calculation of the surrogate SG&A ratio results in double counting freight expenses.[152]
- When deducting freight expenses from the U.S. price, it is Commerce's practice to similarly deduct freight expenses from its calculation of the surrogate SG&A ratio.[153]
- Here, however, even though Commerce deducted freight expenses from U.S. price in its margin calculations for Zinus, it did not deduct those expenses from the calculation of the surrogate SG&A ratio.
- For the final determination, Commerce should exclude Luxury Sleep's "Distribution Costs" from the calculation of the surrogate SG&A ratio.[154]

Petitioners' Case Brief:

- Commerce correctly included Luxury Sleep's distribution costs in the calculation of the surrogate SG&A ratio.[155]
- While it is Commerce's practice to avoid double counting costs, this is only true when "the requisite data are available." Conversely, when the requisite data are not available (*i.e.*, where there are no details or explanatory notes in the financial statement explicitly linking distribution costs to freight costs already accounted for in the normal value buildup), Commerce's practice is to include such distribution costs in full in the surrogate SG&A calculation.[156]
- Commerce's practice is to rely on the information in the surrogate financial statements and not to go behind the financial statements of the surrogate company to determine the appropriateness of including certain items in the financial ratio calculation.[157]
- There is no information in Luxury Sleep's financial statements to indicate that its "Distribution Costs" are transportation expenses directly related to sales.[158]
- For the final determination, Commerce should continue to include Luxury Sleep's "Distribution Costs" in the calculation of the surrogate SG&A ratio.

Commerce's Position: We determine that it is proper to continue to assign Luxury Sleep's "Distribution Costs" to SG&A expenses. In our calculation of the surrogate SG&A ratio for the *Preliminary Determination*, we assigned an expense item listed as "Distribution Costs" in

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[151] *See* Zinus Case Brief at 30.
[152] *Id.*
[153] *Id.*
[154] *Id.* at 31.
[155] *See* Petitioners' Rebuttal Brief at 11.
[156] *Id.*
[157] *Id.*
[158] *Id.*

Luxury Sleep's income statement to SG&A expenses. It is Commerce's practice to deduct outward freight expenses from U.S. price when calculating a dumping margin. Furthermore, in order to avoid double counting freight expenses, Commerce deducts outward freight expenses from surrogate SG&A expenses when calculating the surrogate SG&A ratio.[159] Zinus argues that Luxury Sleep's "Distribution Costs" line item is a freight expense that needs to be deducted from the calculation of the surrogate financial ratio.[160] However, nothing on the record supports this claim.

When we are unable to isolate specific expenses within surrogate financial statements, our practice is "to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy."[161] Furthermore, when "calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in total, rather than performing a line-by-line analysis of the types of expenses included in each category."[162] Zinus' claims that outward freight expenses are double counted is based on an assumption that the "Distribution Costs" line item may include the outward freight expenses. There is no evidence on the record supporting this assumption. Moreover, if we were to exclude distribution costs then we would have to exclude all selling expenses because there are no other line items in Luxury Sleep's financial statements. Distribution costs may consist of numerous types of expenses including outward freight expenses. Since it is Commerce's practice to rely on information in a surrogate's financial statement and not go behind the financial statement of the surrogate company to determine whether it is appropriate to include certain line items in a financial ratio calculation,"[163] we determine that it is inappropriate to go behind the financial statements in the present case to get a breakdown of the expenses that make up distribution costs. We continue to find that there is no record evidence supporting Zinus' claim that Luxury Sleep's "Distribution Costs" represent outward freight expense. Therefore, for this Final Determination, we are continuing to assign Luxury Sleep's "Distribution Costs" to SG&A expenses.

Comment 7: Whether Commerce Should Average the Luxury Sleep and Aerofoam Financial Statements

Petitioners' Case Brief:

- Commerce should average the Luxury Sleep and Aerofoam Manufacturing Sdn. Bhd. (Aerofoam) financial statements to calculate financial ratios.[164]

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[159] *See Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016), and accompanying IDM at Comment 17.
[160] *See* Zinus Case Brief at 30.
[161] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011), and accompanying IDM at 35 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 18A).
[162] *Id*.
[163] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011), and accompanying IDM at 45-46.
[164] *See* Petitioners Case Brief) at 4.

- Aerofoam's financial statements represent the best information available on the record because they are publicly available, audited, unqualified, unconsolidated, and show profits. Additionally, unlike Luxury Sleep, Aerofoam produces only subject merchandise.[165]
- Aerofoam's financial statements are nearly contemporaneous to the POI. Commerce has previously found that "contemporaneity alone would not be a reason to reject {financial} statements." Furthermore, non-contemporaneous financial statements should only be excluded when "suitable" contemporaneous financial data are available. Luxury Sleep's financial statements are not "suitable" because Luxury Sleep produces a range of products that are not subject merchandise, such as "divans, headboards, sofas and related products."[166]
- Commerce has in the past averaged financial statements from different companies covering different time periods and it should do so here.[167]

Zinus' Rebuttal Brief:

- Commerce should reject the petitioners' suggestion to use the Aerofoam financial statement to calculate the financial ratios.[168]
- Commerce should use the Tempur Sealy Mexico, S. de R.l. de C.V. (Tempur Sealy) financial statements which are superior to all Malaysian financial statements on the record because they are publicly available and reflect financial ratios more specific to Zinus' operations, product mix, and distribution model.[169]
- Contemporaneity was the sole reason Commerce rejected the Tempur Sealy financial statements in the *Preliminary Determination*. Commerce should compel the petitioner to place the 2018 Tempur Sealy financial statements on the public record of this proceeding since the current Tempur Sealy financial statements on the record are from 2017 and are thus not contemporaneous with the POI.[170]
- Commerce should not deviate from its practice of calculating surrogate financial ratios using only contemporaneous data, when such data are available. Should Commerce continue to rely on Malaysia as the surrogate country, Commerce should reject the Aerofoam financial statements in favor of the contemporaneous Luxury Sleep financial statements.[171]
- Aerofoam's financial statements are also unusable because Aerofoam uses rubber as a key input in its latex mattresses and because the prices for rubber in the Malaysian market are distorted due to government subsidization and cartelization of this key input.
- Aerofoam and Luxury Sleep's financial statements are not usable because they are not publicly available.[172]

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[165] *Id*.
[166] *Id*.
[167] *Id*. at 7.
[168] *See* Zinus Rebuttal Brief at 3.
[169] *Id*. at 3-4.
[170] *Id*. at 5.
[171] *Id*. at 4.
[172] *Id*. at 5-6.

Commerce's Position: As we stated in the *Preliminary Determination*, the record of this investigation contains the audited financial statements of four companies: Aerofoam, a Malaysian company that produces rubber foam products and spring mattresses and has production processes comparable to those used by producers of mattresses, for the year ending December 2017; Luxury Sleep, a Malaysian company that produces beds, mattresses, divans, headboards, sofas, and related products and has production processes comparable to processes used by producers of mattresses, for the year ending June 2018; Poh Huat Resources Holdings Berhad (Poh Huat), a Malaysian company which produces bedroom suites and home office suites, for the year ending October 2018; and Tempur Sealy Mexico, S. De R.I. De C.V. a Mexican company that produces mattresses and has production processes comparable to those used by producers of mattresses, for the year ending December 2017.[173]

The Luxury Sleep surrogate financial statements on the record cover a period that is contemporaneous with the POI, and they are complete, including notes and an auditor's report. Luxury Sleep is an integrated company, and its financial statement shows a profit before taxes. Luxury Sleep produces identical merchandise to respondents, and its financial statement does not contain any evidence of received countervailable subsidies.[174] While the Aerofoam and Tempur Sealy financial statements indicate that they produce identical merchandise, neither is contemporaneous with the POI.[175] Additionally, while Poh Huat meets most of the above criteria, it does not produce merchandise that is identical to the subject merchandise, unlike Luxury Sleep. Therefore, as we did for the *Preliminary Determination*, we are continuing to value factory overhead, SG&A, and profit using Luxury Sleep's 2018 financial statements.

The petitioners argue that Aerofoam's financial statements represent the best information available on the record and that Luxury Sleep's financial statements are not "suitable" because Luxury Sleep produces a range of products that are not subject merchandise.[176] As we found in the *Preliminary Determination*, Luxury Sleep produces identical merchandise to the respondents. Zinus produces, "sleep products, chairs, bathroom products, packaging materials, shoes, sponge sofas, tents and related camping supplies."[177] In 2017, Zinus' primary business was the "production and sale of iron-framed beds, spring mattresses, sponge mattresses, bedding, and bedroom furniture."[178] Healthcare is mainly engaged in the development and sale of household goods, including textiles, upholstered furniture, maternal and infant supplies, and sponge

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[173] *See Preliminary Determination*, and accompanying PDM at 27; *see also* Zinus' Surrogate Value Submission at Exhibit SV-4 and SV-5; *see also* the petitioner's Surrogate Value Submission at Exhibit 13.
[174] *See* Letter from Zinus, "Mattresses from the People's Republic of China: Zinus's Final Affirmative Surrogate Values Submission," dated May 2, 2019, at Exhibit SV2-4.
[175] *See* Petitioner's Letter, "Mattresses from the People's Republic of China: Petitioners' Surrogate Values Submission," dated March 18, 2019 (Petitioners' March 18, 2019 Surrogate Value Submission) at Exhibit 13; *see also* Zinus' Letter, "Mattresses from the People's Republic of China: Zinus's Affirmative Surrogate Value Submission," dated March 18, 2019 (Zinus SV Submission) at Exhibit SV-6.1.
[176] *See* Petitioner Case Brief at 6-7.
[177] *See* Zinus' February 13, 2019 Section A Questionnaire Response (Zinus February 13, 2019 AQR) at Exhibit A-10.
[178] *Id.*

products.[179] Healthcare also sells flame retardant sponges.[180] The main products Healthcare sells are memory foam mattresses and memory foam pillows.[181] Luxury Sleep produces "beds, mattresses, divans, headboards, sofas" and related products.[182] Luxury Sleep produces many of the same products as Zinus and Healthcare (beds, mattresses, sofas, and bedroom furniture). All three companies make and sell products that are not subject merchandise. However, for all three companies, there is an indication that the primary business consists of production and sales of mattresses. Therefore, we disagree with the petitioners' argument that Luxury Sleep's financial statements are not suitable because Luxury Sleep produces a range of products that are not subject merchandise.

Additionally, the fact that Aerofoam produces only subject merchandise does not mean that Aerofoam's financial statements are superior to those of Luxury Sleep. As we stated in the *Preliminary Determination*, Aerofoam's financial statements are not contemporaneous with the POI.[183] It is Commerce's practice to calculate surrogate financial ratios based on financial statements that are contemporaneous with the POI, or period of review, provided that they are otherwise usable.[184] While contemporaneity alone would not be a reason to reject Aerofoam's financial statements, the record already contains the contemporaneous Luxury Sleep financial statements and, as stated above, Luxury Sleep produces merchandise identical to the respondents' and did not benefit from subsidies. Accordingly, and consistent with Commerce's practice, we are continuing to rely solely on Luxury Sleep's financial statements to calculate surrogate financial ratios.

Zinus argues that Commerce should use the Tempur Sealy's financial statements because they are superior to all of the Malaysian financial statements on the record, in that they are publicly available and reflect financial ratios more specific to Zinus' operations, product mix, and distribution.[185] Furthermore, since the Tempur Sealy financial statements on the record are not contemporaneous with the POI, Zinus argues that Commerce should compel the petitioners to place the 2018 Tempur Sealy financial statements on the record of this proceeding. We disagree with the argument that Tempur Sealy's financial statements are superior to all of the Malaysian financial statements on the record. We also disagree with Zinus' contention that Commerce should compel the petitioners to place the 2018 Tempur Sealy financial statements on the record. Since the record already contains contemporaneous, publicly available financial statements from the primary surrogate country and a producer of identical merchandise (Luxury Sleep), there is no need to open the record and add financial statements from a second surrogate country. While contemporaneity alone would not be a reason to reject Tempur Sealy's financial statements, as we stated above, the record already contains the contemporaneous Luxury Sleep financial

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[179] *See* Healthcare's February 13, 2019 Section A Questionnaire Response (Healthcare February 13, 2019 AQR) at Exhibit A-12.
[180] *Id.*
[181] *Id.*
[182] *See* Letter from Zinus, "Mattresses from the People's Republic of China: Zinus's Final Affirmative Surrogate Values Submission," dated May 2, 2019, at Exhibit SV2-4.
[183] *See Preliminary Determination*, and accompanying PDM at 27.
[184] *See Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 14514 (March 31, 2009), and accompanying IDM at Comment 13.
[185] *See* Zinus Rebuttal Brief at 3.

statements. Luxury Sleep also produces merchandise identical to the respondents' and did not benefit from subsidies. Therefore, we disagree with Zinus that Tempur Sealy's financial statements are superior to all of the Malaysian financial statements.

Zinus also argues that Aerofoam and Luxury Sleep's financial statements are not usable because they are not public due to the fact that they were acquired via a subscription service. We disagree. The fact that Aerofoam and Luxury Sleep's financial statements were acquired via a subscription service does not render them not publicly available. Commerce considers publicly available information to be that which "has intentionally been made available, through paid subscription or otherwise, to the general public by its publisher. We consider the appropriate indication of public availability to be whether any entity can obtain the data."[186] Moreover, at "the very least, public availability should enable any interested party to obtain the same information . . . The Department would consider information to be not publicly available in instances where only a select limited group is permitted to have access to this information by its publisher."[187] There is no evidence on the record indicating that the subscription service is not available to the public at large. Therefore, we disagree with Zinus that Aerofoam's and Luxury Sleep's financial statements are not publicly available.

Lastly, Zinus cites to an industry profile of Aerofoam that references an Aerofoam brand named "Mylatex."[188] Based on this reference, Zinus argues that latex is a key input for mattress production in Malaysia.[189] However, the industry report does not reference rubber usage in the Malaysia mattress industry as a whole. Rather, it only references a specific Aerofoam brand which it claims uses latex, the "Mylatex" brand; there is no information regarding the amount of latex used in the "Mylatex" brand and how this compares to the amount of latex found in other mattress brands produced by Malaysian mattress producers. Further, Commerce notes that the CIMB company profile of the Lee Swee Kiat Group references the Lee Swee Kiat Group as "Malaysia's largest natural latex bedding producer."[190] However, there is no evidence in the CIMB profile demonstrating the amount of latex Lee Swee Kiat Group uses in mattress production, and how consumption amounts for latex foam mattresses compare to latex usage in the production costs of finished mattresses.[191] Commerce further notes that without information regarding the potential effect on Malaysian mattress production costs associated with latex usage as noted above, it is irrelevant whether the Malaysian government is providing subsidies to the rubber industry. In short, there is no record evidence demonstrating the usage of latex in mattress production by Luxury Sleep, the amount of latex used in Aerofoam's "Mylatex" brand is unknown and may be minimal, and there is no record evidence regarding the impact of any claimed rubber subsidies on the Malaysian mattress industry. Therefore, Commerce will continue to use Luxury Sleep' financial statements for surrogate value ratios.

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[186] *See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying IDM at Comment 15.
[187] *Id.*
[188] *See* Zinus' Letter, "Mattresses from the People's Republic of China: Zinus's Surrogate Value Rebuttal Comments," dated March 28, 2019 at Exhibit 1 (Zinus SV Rebuttal) at Exhibit 1.
[189] *See* Zinus Case Brief at 24.
[190] *See* Zinus SV Rebuttal at Exhibit 1.
[191] Commerce notes that the CIMB profile explains that the Lee Swee Kiat Group produces "mainly latex foam (semi-finished) and finished mattresses." *See* Zinus SV Rebuttal at Exhibit 1.

Healthcare Issues

Comment 8: Whether Commerce Should Apply AFA to Healthcare

Petitioners' Case Brief:

- Commerce should apply AFA to Healthcare.[192] Despite numerous extensions and the partial Government shutdown, Healthcare failed to respond timely and fully to Commerce's requests for information. Healthcare's failure to timely and fully respond impeded parties' ability to understand Healthcare's FOP and identify surrogate values.
- Healthcare provided HTS descriptions rather than input descriptions. By doing so, Healthcare made it nearly impossible to identify and classify its inputs.
- Healthcare's failure to respond to Commerce's requests in a timely fashion has culminated in the multiple "minor corrections" that had to be made at verification.
- Healthcare's misreporting of nominal height for certain mattresses is a result of its unwillingness to act to the best of its ability.

Healthcare's Rebuttal Brief:

- Petitioners' argument that Commerce should apply AFA to Healthcare in this investigation is without merit. Commerce issued a preliminary determination and conduced a verification of Healthcare without significant issues.[193]
- Contrary to the petitioners' allegations, the record demonstrates that Healthcare responded timely and fully to every one of Commerce's requests for information in its FOP and U.S. sales responses. Healthcare dedicated staff, during busy periods, from both Healthcare and China Beds Direct (CBD), who provided immense time and resources to gathering the significant amounts of information submitted to Commerce.
- Healthcare provided all requested information related to complex product characteristics, as detailed as even the level of foam density measurements for each individual layer of mattress and types of foam additives used, advocated by the petitioners in this investigation. Healthcare put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in this investigation.
- Petitioners have failed to identify a single instance in which Healthcare failed to submit a questionnaire response by the deadlines established by Commerce. Healthcare's extension requests were driven in part by the complexity of the petitioners' comments. To the extent the petitioners have a complaint about the schedule of this investigation, the petitioners' complaint should be directed toward Commerce, not Healthcare.
- Commerce made no mention of any difficulty in calculating Healthcare's dumping margin. Having thus used Healthcare's data without issue, it would be extraordinarily unusual for Commerce now to conclude that the information submitted by Healthcare was unusable. For this reason, the petitioners' call for the application of AFA should be rejected.
- Healthcare's minor corrections presented at the start of verification do not warrant the application of AFA due to the minor impact the correction had on Healthcare's FOP and

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[192] *See* Petitioners' Case Brief.
[193] *See* Healthcare Rebuttal Brief.

sales databases. The misreporting affected the reported unit consumption amounts for inputs in only a limited amount of reported control numbers (CONNUMs).
- Moreover, in the vast majority of instances, the correction of the CONNUM had an equal impact on both the sales file and the FOP file, meaning that there was simply a one-to-one reassignment of normal value to U.S. sales with no margin impact.
- Healthcare's misreporting of one product characteristic of a complex CONNUM, driven by the petitioners, is reasonable and does not suggest Healthcare "withheld information necessary for Commerce to conduct a full investigation."[194]

Commerce's Position: We agree with Healthcare. To apply facts available pursuant to section 776(a)(1) and (2) of the Act, Commerce must find "necessary information is not available on the record" or that an interested party (A) withheld information that has been requested, (B) failed to provide information within the deadlines established by Commerce, (C) significantly impeded an investigation, or (D) provided information that cannot be verified. Further, pursuant to section 776(b) of the Act, to make an adverse inference Commerce must find that parties have "failed to cooperate by not acting to the best of their ability." Commerce finds that Healthcare has cooperated with Commerce's requests for information during the course of this investigation, and the statutory requirements for applying facts available with an adverse inference have not been met.

Commerce finds that Healthcare provided all requested information within Commerce's deadlines and did not significantly, or otherwise, impede this investigation. While Healthcare requested and received multiple extensions to submit both original questionnaire and supplemental questionnaire responses,[195] Healthcare timely submitted all responses to Commerce requests for information.

With regard to Healthcare's product descriptions, while the petitioners claim that Healthcare's input descriptions lack specificity, the petitioners do not identify a specific input that Healthcare failed to properly identify for surrogate value purposes. Moreover Commerce received no comments from any interested party regarding its selection of surrogate values for FOP inputs for Healthcare. For the *Preliminary Determination*, Commerce was able to properly identify appropriate surrogate values for all of Healthcare's inputs.[196]

Commerce further finds that the corrections presented prior to verification were minor. For instance, Healthcare reported that it incorrectly provided the nominal height for certain[197] mattresses in its U.S. sales database.[198] As Healthcare explains, and Commerce agrees, Healthcare's misreporting affected the reported unit consumption amounts for only a small amount of the total reported CONNUMs.[199] Thus, we do not consider Healthcare's misreporting

[194] *See* Healthcare Rebuttal Brief (citing *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 1).
[195] *See e.g.*, Letter from Healthcare, "Mattresses from the People's Republic of China: Extension Request for Second Supplemental Section C Questionnaire Response, dated May 1, 2019.
[196] *See Preliminary Determination*, and accompanying PDM at 25-27.
[197] *See* Healthcare Rebuttal Brief at 6.
[198] *See* Healthcare Verification Report at 2-3.
[199] *See* Healthcare Rebuttal Brief at 6.

of nominal height to rise to the level of warranting adverse facts available or even facts available. Accordingly, for the final determination, we will continue to calculate Healthcare's cash deposit rate based on the product descriptions provided by Healthcare during the course of this investigation, and the application of AFA is not warranted.

Comment 9: Whether Commerce Should Allow an Adjustment for Healthcare's Freight Revenue

Petitioners' Case Brief:

- Healthcare failed to reconcile its reported freight revenue with its reporting methodology. Even though Healthcare claimed freight revenue for certain sales and that freight revenue is charged separately on invoices, Healthcare reported freight revenue for certain sales for which there is no freight charge listed on their respective invoices.
- If Commerce does not apply AFA to Healthcare, Commerce should zero out all freight revenue.

Healthcare's Rebuttal Brief:

- Healthcare included freight charges on invoices at the discretion of its customers and Healthcare reported freight revenue for all appropriate channel 3 sales, which Commerce verified.[200]
- Commerce verified Healthcare's reported freight revenue and instructed Healthcare to report freight revenue separately in its U.S. sales database. Commerce was fully satisfied that there were no discrepancies between CBD's explanation of freight revenue and its record.

Commerce's Position: We agree with Healthcare. Healthcare reported that it realized freight revenue and provided a net amount for freight revenue in its original Section C questionnaire response.[201] Pursuant to Commerce's request, Healthcare revised its reporting methodology to report freight revenue in a separate field and not adjust gross unit price for freight revenue.[202]

Commerce examined Healthcare's freight revenue during verification and confirmed that Healthcare properly reported freight revenue based on its reporting methodology.[203] Additionally, Commerce confirmed that Healthcare properly applied freight revenue to only those channel 3 sales where freight expenses were incurred.[204] We find that Healthcare's reporting methodology was reasonable and its calculation accurate.

Further, we note that the petitioners' argument against allowing a freight revenue adjustment concerns proof of payment.[205] However, we verified the payment of freight revenue and found

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[200] *See* Healthcare Verification Report at 18 and Healthcare Rebuttal Brief at 7.
[201] *See* Healthcare's February 26, 2019 Section C Questionnaire Response (Healthcare CQR) at C-41 to C-42.
[202] *See* Commerce's Letter, "Antidumping Duty Investigation of Mattresses from the People's Republic of China: First Supplemental Section C Supplemental Questionnaire," dated March 29, 2019.
[203] *See* Healthcare CEP Verification Report at 18.
[204] *Id.*
[205] *See* Petitioners Case Brief at 15.

no discrepancies.[206] Moreover, we note that freight charges were listed separately on the sales invoice for a U.S. sale.[207] Accordingly, for the final determination, Commerce accepts Healthcare's reported freight revenue without any adjustment, and we have not applied either facts available or AFA.

Comment 10: Whether Commerce Should Re-Calculate Healthcare's Indirect Selling Expense Ratio

Petitioners' Case Brief:

- Healthcare incorrectly excluded certain expenses from its indirect selling expenses (ISE) and Commerce should recalculate Healthcare's indirect selling expenses to capture all applicable expenses.
- Healthcare incorrectly attributed expenses associated with Other G&A Expenses and G&A Payroll and Benefits as company general and administrative expenses and did not report these expenses. As Healthcare is only a reseller of merchandise and does not further process merchandise or manufacture goods on its own account, Other G&A Expenses and G&A Payroll and Benefits should be reported as ISE.
- Because Zinus' POI income statement does not segregate selling expenses from general and administrative expenses, Commerce included general and administrative expenses in Zinus' ISE. As such, Commerce should also include Healthcare's general and administrative expenses, Other G&A Expenses and G&A Payroll and Benefits, in its ISE.

Healthcare's Rebuttal Brief:

- Petitioners fail to claim that there are inaccuracies in Healthcare's reported ISE, which Commerce fully verified. Instead, the petitioners argue that Healthcare should report more expenses in its ISEs. Petitioners' contention is flawed because the petitioners base their argument on the incorrect assumption that CBD is only a reseller of mattresses.
- CBD engaged in certain non-selling activities for Healthcare.[208]
- CBD's Human Resources personnel are responsible for activities related to non-sales personnel; these sorts of activities were properly excluded from CBD's indirect selling expenses rate, as they are not directly related to the resale of Healthcare's merchandise, and are also appropriately not otherwise reported as they are implicitly included in the financial ratios used by Commerce in calculating a dumping margin in a non-market economy case.[209]
- The fact that Zinus may have used a different methodology to report its affiliate's expenses is entirely irrelevant to the calculation of CBD's expense rate.

Commerce's Position: We agree with the petitioners in part. Certain expenses listed in CBD's January through June 2018 Profit and Loss Statement (CBD P&L) should be included in Healthcare's indirect selling expense ratio. Generally, it is Commerce's practice to treat all

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[206] *See* Healthcare CEP Verification Report at 18.
[207] *Id*.
[208] *See* Healthcare AQR at Exhibit A-2.3, Healthcare Rebuttal Brief at 9 and Healthcare Final Analysis Memorandum at 6-7 for these non-selling activities.
[209] *See* Healthcare Rebuttal Brief at 9.

expenses incurred by affiliated resellers as selling expenses.[210] Section 772(d)(1)(D) of the Act directs Commerce to reduce CEP by the amount of "any selling expenses not deducted under subparagraph (A), (B), or (C)." Administrative expenses incurred by a company that acts only as an affiliated reseller in the United States in the sale of subject merchandise is not covered by section 772(d)(1)(A)-(C) of the Act. Our normal practice is to include such expenses in the indirect selling expense total because these expenses support the selling functions of the reseller.[211]

As such, we will include Healthcare's Chattanooga, Tennessee Corporate Office under "Other G&A Expenses" and "G&A Payroll and Benefits," less those expenses identified by Healthcare as unrelated to selling activities,[212] to the existing ISE as reported by Healthcare in our recalculation of Healthcare's ISE for this final determination.[213]

Zinus Issues

Comment 11: Surrogate Values for Certain Zinus Inputs

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by {Commerce}." It is Commerce's stated practice to choose a surrogate value that represents country-wide price averages specific to the input in question, which are contemporaneous with the period under consideration, net of taxes and import duties, and based on publicly available, non-aberrational, data from a single surrogate ME country.[214] If a surrogate value meets these criteria, Commerce finds that it represents a reliable and appropriate price for valuing an individual input. Further, in interpreting Commerce's Policy Bulletin 04.1, the CIT stated that, generally, "'product specificity' logically must be the primary consideration in determining {the} 'best available information'" to value a particular input.[215]

Additionally, section 773(c)(1) of the Act directs Commerce to determine normal value for subject merchandise from non-market economy countries by valuing each respondent's FOP using the "best available information." In so doing, Commerce relies on market economy countries that are at a level of economic development comparable to the NME country at issue

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[210] *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003), and accompanying IDM at Comment 11.
[211] *See Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286 (July 1, 2014), and accompanying IDM at Comment 3.
[212] *See* Letter from Healthcare, "Mattresses from People's Republic of China: Response to the Third Section C Supplemental Questionnaire," dated May 15, 2019, at 5, Healthcare Rebuttal Brief at 9, and Healthcare Final Analysis Memorandum at 6-7 for these non-selling activities.
[213] *See* Healthcare Final Analysis Memorandum and *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019), and accompanying IDM at Comment 8.
[214] *See* Policy Bulletin 04.1; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016), and accompanying IDM at Comment 1.
[215] *See Taian Ziyang Food Company, Ltd. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011) at 62.

and significant producers of comparable merchandise.[216] In accordance with the "best available information" standard, Commerce is required to evaluate the information on the record as the parties have chosen to develop it and select what it considers to be the best available information for valuing each factor.[217]

A. Certain Raw and Packing Materials

Zinus' Case Brief:

- Commerce relied on certain Malaysian HTS classifications which are less specific to Zinus' raw and packing material inputs for the *Preliminary Determination*.[218] Should Commerce continue to rely on Malaysia as the surrogate country, it should use the Malaysian HTS classifications proposed by Zinus for such materials.
- Should Commerce find fault with any of Zinus' proposed Malaysian HTS classifications, it is incumbent that Commerce point to record evidence illustrating such fault.
- Each of the input materials was available to Commerce for inspection during verification and any decision to not review the material inputs cannot, by itself, justify the application of a less-specific SV.

Petitioners' Rebuttal Brief:

- Zinus incorrectly claims that its self-assigned Malaysian HTS classifications are presumptively correct and it is Commerce's burden to establish the record by pointing to record evidence indicating Zinus' proposed surrogate values are inaccurate.
- Certain Malaysian HTS classifications identified by Zinus are incorrect, and therefore, none deserve a presumption of being correct. For example:
  - M54 which Zinus described as "Cotton Bag (Textile)" proposed Malaysian HTS classification 4202.32 "Articles Of A Kind Normally Carried In The Pocket Or In The Handbag: With Outer Surface Of Plastic Sheeting Or Of Textile Materials. Articles *normally* carried in a pocket or handbag are not used to produce mattresses.
  - P02 which Zinus described as "Instruction (other printed material)" proposed Malaysian HTS classification 4911.99.90.10 "Printed Matter Which Grants The Right To Access, Install, Reproduce Or Otherwise Use Software (Including Games), Data, Internet Content (Including In-Game Or In-Application Content) Or Services, Or Telecommunications Services (Including Mobile Service)." Mattresses do not have instructions related to software, data, internet content, or telecommunication services.
- Commerce assigned the most specific Malaysian HTS classification possible to 13 of Zinus' material inputs M01, M02, M03, M05, M10, M13, M15, M57, M58, M61, M67, P01, and P16.

Commerce's Position: Zinus' argument that the Malaysian HTS classifications selected by Commerce and assigned to Zinus' FOPs are less specific is not supported by the record evidence. Specifically, in its case brief, Zinus did not provide any argument as to why its proposed Malaysian HTS classifications are more specific to its FOPs, nor did it provide any argument to

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[216] *See* Section 773(c)(4)(A)-(B) of the Act; *see also* 19 CFR 351.408(b).
[217] *See Cf. QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) ("{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce.").
[218] *See* Zinus Case Brief at 33.

support its contention that the Malaysian HTS classifications selected by Commerce are less specific to its FOPs. For the *Preliminary Determination*, Commerce evaluated the factual information on the record, as the parties have chosen to develop it, and selected what it considers to be the best information on the record for valuing Zinus' FOPs. However, although Zinus has not provided any argument or evidence to support its claim that Commerce selected "less specific" Malaysian HTS classifications to value its FOPs, Commerce has again reviewed the factual information placed on the record to value FOPs and Zinus' descriptions of its material inputs to determine whether the proper Malaysian HTS classification were selected.

Regarding M1 - M3, M10, M13, M15, M57, M58, M61, M67, P01, and P16, Zinus claims that adding four zeroes to the end of the Malaysian HTS classification selected by Commerce, would result in a more specific SV. Commerce disagrees with Zinus. Commerce reviewed the GTA descriptions for Zinus' proposed Malaysian HTS classifications for the above-mentioned material inputs and found that some Malaysian HTS classification descriptions did not change and others did change. For example, M02 and M03 were assigned Malaysian HTS classification 3815.90 for the *Preliminary Determination*. The GTA description associated with 3815.90 is "Reaction Initiators, Reaction Accelerators And Catalytic Preparations Nesoi, O/T Supported Catalysts." The GTA description for Zinus' proposed Malaysian HTS classification (*i.e.*, 3815.90.00.00) is also "Reaction Initiators, Reaction Accelerators And Catalytic Preparations Nesoi, O/T Supported Catalysts." Therefore, the GTA description of Zinus' proposed Malaysian HTS classification is the exact description of the HTS classification selected by Commerce for the *Preliminary Determination*. As stated above, certain GTA descriptions did change when adding four zeroes to the end of Commerce's Malaysian HTS classification selection. For instance, M10 was assigned Malaysian HTS classification 3506.91 by Commerce for the *Preliminary Determination*. The GTA description for Malaysian HTS classification 3506.91 is "Adhesives Based On Polymers Of Headings 3901 To 3913 Or On Rubber, Nesoi." However, the GTA description for Zinus' proposed Malaysian HTS classification 3506.91.00.00 is "Adhesives Based On Polymers Of Headings 3901 To 3913 Or On Rubber, Nesoi, Adhesives, < A Net Wgt Of 1 Kg: Adhesives Based On Polymers Of Headings 39.01 To 39.13 Or On Rubber." Although, the GTA description changes by adding four zeroes, the SV calculated using either Malaysian HTS classification does not change. Specifically, the SV for M10 calculated using either Malaysian HTS classification is 25.06 MYR per kilogram.[219] Commerce notes that for all GTA descriptions that change by adding four zeroes to the end of our selected Malaysian HTS classification, the SV does not change. Based on the above analysis, Commerce is not changing the Malaysian HTS classifications assigned to M1 - M3, M10, M13, M15, M57, M58, M61, M67, P01, and P16 for the final determination.

Concerning M05-M07, M09, M11, M14, M16, M22, M37, M47, M54, M59, M60, M65 – M66, P02 – P03, P05 - P07, P10, and P12, Zinus proposed an additional sub-heading to the Malaysian HTS classification selected by Commerce at the Preliminary Determination, and in some cases,

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[219] *See* Memorandum, "Less-Than-Fair-Value Investigation of Mattresses from China: Zinus Preliminary Analysis Memorandum," dated May 28, 2019 (Zinus Preliminary Analysis Memorandum) at Exhibit VI; *see also* Zinus 5/2/19 SV Submission at Exhibit SV2-2.

an entirely different Malaysian HTS chapter.[220] However, after reviewing Zinus' material descriptions for the above-mentioned FOPs, Commerce has found that Zinus has not provided any evidence to support its claim that its proposed Malaysian HTS classification are more specific. Specifically, as stated in *QVD Food Co., Ltd. v. United States*, "the burden of creating an adequate record lies with interested parties and not with Commerce."[221] Thus, Zinus failed to meet this burden with regard to its material descriptions reported for the previously-mentioned FOPs. For example, Zinus' material description for M05 is "Castor Oil."[222] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 1515.30) is "Castor Oil And Its Fractions, Whether Or Not Refined But Not Chemically Modified." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 1515.30.90.00) is "Castor Oil And Its Fractions, Whether Or Not Refined But Not Chemically Modified, Other Than Crude Oil." As is apparent, Zinus' reported material description of M05 (*i.e.*, "Castor Oil") does not specify the type of castor oil used in its production of subject merchandise. Therefore, excluding crude castor oil from the calculation of the SV for M05 is not supported by record evidence.

Further, Zinus' material descriptions for M37 is "Fabric-Knitted Rib," "FR COTTON RIB," and "Knitted Cotton Rib Fabric – Non Dye."[223] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 6006) is "Knitted Or Crocheted Fabrics, Nesoi." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 6006.22) is "Knitted Or Crocheted Fabrics, Of Cotton, Dyed, Nesoi." Zinus' material description for M37 illustrates that the material is not dyed. Thus, by Zinus' own description of M37, the material input is not dyed and, therefore, should not be classified under Malaysian HTS classification 6006.22, because this classification encompasses dyed materials.

Additionally, Zinus' material descriptions for M47 is "Fabric-Warp - Knitted" and "Warp knitted Fabric printed."[224] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 6005) is "Warp Knit Fabrics (Including Those Made On Galloon Knit Machines), Other Than Those Of Heading 6001 To 6004." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 6006.22) is "Knitted Or Crocheted Fabrics, Of Cotton, Dyed, Nesoi." Zinus' material description for M47 illustrates that the material is of a specific type of knitting, *i.e.*, warp knitting. The Malaysian HTS classification proposed by Zinus does not include warp knit fabrics whereas the Malaysian HTS classification selected by Commerce for the Preliminary Determination does include such fabrics. Thus, by Zinus' own description of M47, the material input is warp knit fabric, and therefore, cannot be classified under Malaysian HTS classification 6006.22, because this classification does not include warp knit fabrics.

[220] Commerce notes that Zinus has proposed a non-existent HTS classification for M09, *i.e.*, HTS classification 9022.09. Therefore, Commerce did not perform a comparison analysis with regard to M09.
[221] *See* 658 F.3d 1318, 1324 (Fed. Cir. 2011).
[222] *See* Zinus' Letter, "Mattresses from the People's Republic of China: Zinus's Resubmission of the Exhibit SD2-31 (Zinus's Appendix VI)," dated May 7, 2019 (Zinus May 7, 2019 Submission) at Attachment.
[223] *Id.*
[224] *Id*.

Finally, as the petitioners have pointed out, the GTA descriptions for the Malaysian HTS classification proposed by Zinus for M54 and P02 (*i.e.*, 4202.32 and 4911.99.90.10, respectively) do not match the material descriptions reported by Zinus. Specifically, Zinus describes M54 as "CANVASBAG," "CANVASBAG.EYE CUP" and "Cotton Bag (Textile)."[225] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 4202.92) is "Container Bags, Boxes, Cases And Satchels Nesoi, With Outer Surface Of Sheeting Of Plastics Or Of Textile Materials." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 4202.32) is "Articles Normally Carried In The Pocket Or Handbag, With Outer Surface Of Sheeting Of Plastics Or Of Textile Materials." We agree with the petitioners that raw materials used to produce mattresses would not be articles normally carried in the pocket or handbag. We also note that Zinus' reported material descriptions for M54 do not provide any indication that it would be carried in a pocket or handbag.

Regarding P02, Zinus' reported material descriptions are "Packing – Instruction," "ZINUS THANK YOU CARD.DE - GREEN," and "Instruction (Other printed matter)."[226] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 4901.10) is "Printed Books, Brochures, Leaflets And Similar Printed Matter, In Single Sheets, Whether Or Not Folded." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 4911.99.90.10) is "Printed Matter Which Grants The Right To Access, Install, Reproduce Or Otherwise Use Software (Including Games), Data, Internet Content (Including In-Game Or In-Application Content) Or Services, Or Telecommunications Services (Including Mobile Service)." We agree with the petitioners that Zinus' material descriptions for P02 do not provide any indication that the material itself does not give any instruction on software, data, internet content or services, or telecommunication services. Accordingly, for the final determination, based on the above analysis, Commerce is not changing its selection of Malaysian HTS classifications assigned to M05-M07, M11, M14, M16, M22, M37, M47, M54, M59, M60, M65 – M66, P02 – P07, P10, and P12 because record evidence does not indicate that Commerce selected a less specific surrogate value.

With regard to M08, M55, M64, P08, P11, and P14, Commerce agrees with Zinus that the Malaysian HTS classifications assigned to these FOPs at the *Preliminary Determination* are less specific than the Malaysian HTS classification proposed by Zinus. Zinus' material descriptions for M08 is "Chemical - Others," "FLAME RETARDANT CHEMICAL," and "Flame retardant chemical (Finishing agents, used in the textile industries)."[227] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 3809.91) is "Finishing Agents, Dye Carriers And Preparations Nesoi, Of A Kind Used In The Textile Or Like Industries." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 3809.91.90) is "Finishing Agents, Dye Carriers And Preparations Nesoi, Of A Kind Used In The Textile Or Like Industries, O/T With A Basis Of Amylaceous Substances: Used In The Textile Or Like Industries: O/T Softening Agents." Zinus' material description for M08 illustrates that the material is a flame retardant and not a softening agent. The Malaysian

[225] *Id*.
[226] Commerce notes that Zinus provided several more material descriptions for P02, none of which could be used to justify the GTA description provided for HTS classification 4911.99.90.10.
[227] *See* Zinus May 7, 2019 Submission at Attachment.

HTS classification proposed by Zinus does not include softening agents whereas the Malaysian HTS classification selected by Commerce could include such materials. Thus, for the final determination, Commerce will use Malaysian HTS classification 3809.91.90 (not HTS classification 3809.91) to calculate a SV for M08, because this Malaysian HTS classification is more specific to Zinus' FOP.[228]

Zinus describes M55 as "Other Accessory – Eye mask," and "Eye mask textile."[229] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 6307.90) is "Made-Up Textile Articles, Nesoi." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 6307.90.90) is "Made-Up Textile Articles, Nesoi, Other Than Umbrella Covers In Pre-Cut Triangular Form, Surgical Masks, Safety Harnesses, Fans And Handscreens And Laces For Shoes, Boots, Corsets And The Like." Zinus material description for M55 illustrates that the material is a type of eye mask textile and not umbrella covers, surgical masks, safety harnesses, fans, handscreens, or laces for shoes, boots, or corsets. The Malaysian HTS classification proposed by Zinus does not include such material whereas the Malaysian HTS classification selected by Commerce could include such material. Thus, for the final determination, Commerce will use Malaysian HTS classification 6307.90.90 (not HTS classification 6307.90) to calculate a SV for M55, because this Malaysian HTS classification is more specific to Zinus' FOP.[230]

Zinus' material descriptions for M64 is "Sewing-Thread," and "Sewing thread (synthetic staple fiber)."[231] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 5401.10) is "Sewing Thread Of Manmade Filaments, Whether Or Not Put Up For Retail Sale, Of Synthetic Filaments." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 5508.10.90) is "Sewing Thread, Of Synthetic Staple Fibers, Whether Or Not Put Up For Retail Sale, Of Synthetic Staple Fibres: O/T Put Up For Retail Sale." Zinus' material description for M64 illustrates that the material is a type of sewing thread of synthetic staple fibers and not sewing thread of manmade filaments. Thus, for the final determination, Commerce will use Malaysian HTS classification 5508.10.90 to calculate a SV for M64, because this Malaysian HTS classification is more specific to Zinus' FOP.[232]

Zinus describes P08 and P11 as "Wheel," and "Box Wheel (Other article of plastic)," and "NYLON TIE," and "NYLON TIE (Other article of plastic)," respectively.[233] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 3926.90) is "Articles Of Plastics And Articles Of Polymers And Resins Of Headings 3901 To 3914, Nesoi, Articles Of Plastics, Nesoi." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 3926.90.99) is "Articles Of Plastics And Articles Of Polymers And Resins Of Headings 3901 To 3914, Nesoi, Articles Of Plastics, Nesoi, Other Than

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[228] *See* Memorandum, "Final Determination in the Antidumping Duty Investigation of Mattresses from the People's Republic of China: Analysis Memorandum for Zinus (Xiamen) Inc.", dated concurrently with this memorandum (Zinus Final Analysis Memorandum).
[229] *See* Zinus May 7, 2019 Submission at Attachment.
[230] *See* Zinus Final Analysis Memorandum.
[231] *See* Zinus May 7, 2019 Submission at Attachment.
[232] *See* Zinus Final Analysis Memorandum.
[233] *See* Zinus May 7, 2019 Submission at Attachment.

Of A Kind Used For Grain Storage And Empty Capsules Of A Kind Suitable For Pharmaceutical Use." Zinus' material descriptions for P08 and P11 illustrate that the materials are plastic packing materials and not plastic materials used in grain storage or pharmaceutical capsules. The Malaysian HTS classification proposed by Zinus does not include such material whereas the Malaysian HTS classification selected by Commerce could include these materials. Thus, for the final determination, Commerce will use Malaysian HTS classification 3926.90.99 to calculate a SV for P08 and P11, because this Malaysian HTS classification is more specific to Zinus' FOPs.[234]

Zinus' material descriptions for P14 is "Packing Material" and "SHAFT (Other article of plastic)."[235] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 3923.90) is "Articles For The Conveyance Or Packing Of Goods, Nesoi, Of Plastics." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 3926.90.99) is "Articles Of Plastics, Nesoi, Other Than Of A Kind Used For Grain Storage And Empty Capsules Of A Kind Suitable For Pharmaceutical Use." Zinus' material description for P14 illustrates that the material is a type of plastic packing material and not sewing thread of manmade filaments. The Malaysian HTS classification selected by Commerce in the *Preliminary Determination* is specific to plastic materials for the packing of goods, whereas the Malaysian HTS classification proposed by Zinus could include materials not used for the packing of goods. Thus, by Zinus' own description of P14, the material input is specific to packing, and therefore, Malaysian HTS classification 3923.90, is the best available information to value P14. Therefore, Commerce is not revising its selection of its Malaysian HTS classification assigned to P14 for the final determination.

B. Diphenylmethane-Diisocyanate (M04)

Zinus' Case Brief:

- M04 is "Crude (Polymeric) MDI," and should be assigned Malaysian HTS classification 3909.31 which is applicable to amino-resins.[236]
- During verification, Commerce witnessed that M04 is a mixed *liquid* chemical and not a solid material.[237]
- Malaysian HTS classification 2929 is incorrect because it is a mixture containing "diphenylmethane-diisocyanate" (or monomelic MDI).
- Zinus provided an analysis that makes the distinction between monomelic MDI, classifiable in Chapter 29, and Zinus' input, polymeric MDI, that is a mixed liquid chemical provided for in Chapter 39.[238]
    - The World Customs Organization (WCO) explanatory notes state:

[234] *See* Zinus Final Analysis Memorandum.
[235] *See* Zinus May 7, 2019 Submission at Attachment.
[236] *See* Zinus 5/2/19 SV Submission at SV2-3.
[237] *See* Zinus Verification Report at Exhibit CVE-4 (depiction of liquid material being poured from a container that then becomes foam, and the fact that the "blended chemicals" are "poured" (*i.e.*, the mixed chemicals including MDI are liquid)).
[238] *See* Zinus 5/2/19 SV Submission at SV2-3.

> "Poly(methylene phenyl isocyanate) (often referred to as 'crude MDI', 'polymeric MDI' or 'poly(diphenylmethane) diisocyanate') is an opaque, dark brown to clear, light brown liquid and is synthesized by reaction of aniline and formaldehyde to form a mixture of (methylene phenylamine) oligomers, which is subsequently reacted with phosgene and heat to form free isocyanate functions. The product is a chemically modified polymer of aniline and formaldehyde (a chemically modified amino-resin). It contains pure MDI and MDI oligomer mixtures…"[239]

  - Based on the above, the organic compound classified under Malaysian HTS 2929.10.10 is a *component* of Zinus' polymeric MDI input.

Petitioners' Rebuttal Brief:

- Zinus describes its input M04 as MDI, or Diphenylmethane-diisocyanate.[240] Zinus now describes this input as "Crude (Polymeric) MDI," which is a Malaysian HTS description, not Zinus' product description.
- Zinus has not provided any documentation (*e.g.*, material specification sheets) demonstrating that M04 is "Crude (Polymeric) MDI" or "a mixture of MDI and Polymeric MDI." Without such documentation, the WCO explanatory notes do not support Malaysian HTS classification 3909.31.
- Solid chemicals can be processed into a liquid through heating or other means.
- Healthcare (also a mandatory respondent) uses MDI in its foam process and suggests a Malaysian HTS classification under Chapter 29 to value its MDI.[241]

Commerce Position: Zinus' material descriptions for M04 are "Chemical – MDI," "MDI," and "Diphenylmethane-diisocyanate."[242] Zinus also describes M04 as "diphenylmethane-diisocyanate" (or monomelic MDI) which is a chemically modified polymer of amino-resin and "plymethane polyphenyl isocyanate" (or polymeric MDI).[243] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 2929.10.10) is "Nitrogen Function Compounds Nesoi, Isocyanates, Diphenylmethane Diisocyanate (Mdi)." The GTA description for Zinus' proposed Malaysian HTS classification (*i.e.*, 3909.31) is "Amino-Resins, Phenolic Resins And Polyurethanes, In Primary Forms, Poly(Methylene Phenyl Isocyanate) (Crude Mdi, Polymeric Mdi)."

Zinus claims that M04 is "Crude (Polymeric) MDI." However, as the petitioners have pointed out, Zinus has not provided any record evidence that M04 is "Crude (Polymeric) MDI." As stated above, Zinus provided four material description for M04, and none describe M04 as "Crude (Polymeric) MDI." However, we disagree with the petitioners' claim that Zinus has not

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239 *Id*.
240 *See* Zinus May 7th Submission at Attachment.
241 *See* Healthcare's March 18, 2019 Surrogate Value Submission at Exhibit SV-1.
242 *See* Zinus May 7, 2019 Submission at Attachment.
243 *See* Zinus' May 15, 2019 Pre-Preliminary Determination Comments (Zinus May 13, 2019 SV Submission) at 13.

provided any documentation demonstrating that M04 is "a mixture of MDI and Polymeric MDI." Zinus did in fact describe M04 as a "{m}ixture of MDI and Polymeric MDI."[244] This description does fall within the GTA description for Malaysian HTS classification 3909.31, *i.e.*, "Amino-Resins, Phenolic Resins And Polyurethanes, In Primary Forms, Poly(Methylene Phenyl Isocyanate) (Crude Mdi, *Polymeric Mdi*)" (emphasis added).

Zinus claims that Malaysian HTS classification 2929 pertains to monomelic MDI and provides an analysis that makes a distinction between monomelic MDI and polymeric MDI (a mixed liquid chemical provided for in Chapter 39). The analysis referenced by Zinus states that poly(methylene phenyl isocyanate) (often referred to as "crude MDI", "polymeric MDI," or "poly(diphenylmethane) diisocyanate") is put through certain chemical processes resulting in a product which is a "chemically modified polymer of aniline and formaldehyde (a chemically modified amino-resin). It contains pure MDI and MDI oligomer mixtures." The original chemicals in the above analysis also fit the description for M04 provided by Zinus, *i.e.*, "{m}ixture of MDI and Polymeric MDI." Specifically, the record indicates that M04 is a polymeric MDI.

We agree with Zinus that during verification Commerce witnessed M04 as being a liquid. However, there is nothing in the GTA description of the Malaysian HTS classification selected by Commerce at the Preliminary Determination (*i.e.*, Nitrogen Function Compounds Nesoi, Isocyanates, Diphenylmethane Diisocyanate (Mdi)) that suggests that the material is not a liquid.

We selected Malaysian HTS classification which is identical to Zinus' own reported material description, *i.e.*, "Diphenylmethane-diisocyanate." Specifically, for the *Preliminary Determination*, we selected Malaysian HTS classification 2929.10.10 ("Isocyanates, Diphenylmethane Diisocyanate (Mdi)"), which represents the exact material described by Zinus. However, after further review of the record, Zinus has provided further description for M04, and Zinus stated that M04 is "{m}ixture of MDI and Polymeric MDI" which is specifically included in Malaysian HTS classification 3909.31, *i.e.*, "Amino-Resins, Phenolic Resins And Polyurethanes, In Primary Forms, Poly(Methylene Phenyl Isocyanate) (Crude Mdi, *Polymeric Mdi*)" (emphasis added). Therefore, for the final determination, we are revising the Malaysian HTS classification used to calculate a SV for M04.[245]

C. PPG (M18), POP (M19), and Polyol (M20)

Zinus' Case Brief:

- Commerce selected Malaysian HTS classification 3907.20.90 which is applicable to polyethers, over Zinus' proposed classifications for propylene copolymers.
- M18 and M19 should be assigned Malaysian HTS classification 3902.30.30 as it is applicable to polymers of propylene or of other olefins, in primary forms, propylene copolymers, in the form of liquids or pastes.
- M20 should be assigned Malaysian HTS classification 3901.90.90 as it is applicable to polymers of ethylene, in primary forms, other.

[244] *See* Zinus May 7, 2019 Submission at Attachment.
[245] *See* Zinus Final Analysis Memorandum.

- Malaysian HTS classification 3907.20.90 would require that M18-M20 be considered polyacetals but Commerce provided no evidence indicating that these chemicals are polyacetals.
- M18-20 are copolymers based on the material description itself (multiple polymers are identified) and the WCO "copolymer" explanatory note.[246]

Petitioners' Rebuttal Brief:
- Certain proprietary documentation on the record indicates that M18, M19, and M20 should be classified under Malaysian HTS classification 3907.20.

Commerce's Position: Zinus' material descriptions for M18 is "Chemical-Polyol," "PPG," and "Glycerol, propylene oxide, ethylene oxide polymer."[247] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 3907.20.90) is "Polyacetals, Other Polyethers And Epoxide Resins, In Primary Forms; Polycarbonates, Alkyds, Polyallyl Esters And Other Polyesters, In Primary Forms, Polyethers Nesoi, In Primary Forms, Other Polyethers: O/T Polytetramethylene Ether Glycol." The GTA description for Zinus' proposed Malaysian HTS classification (*i.e.*, 3902.30.30) is "Propylene Copolymers, In Primary Forms, Propylene Copolymers: In The Form Of Liquids Or Pastes."

After reviewing the record evidence, we have determined to continue to value M20 using Malaysian HTS classification 3907.20 for the final determination.[248] For a full discussion of Commerce's position, *see* Zinus Final Analysis Memorandum.

D. Knitted Glass Fiber and Modacrylic Fabric (M26), Knitted Glass Fiber and Modacrylic Fabric with Non-Woven Coated (M27), and Knitted Glass Fiber and Modacrylic Fabric (Box Type) (M28)

Petitioners' Case Brief:
- The petitioners and Zinus agree that Commerce should assign Malaysian HTS classification 7019.32 to M26, M27, and M28.
- Zinus described M26, M27, and M28 as knitted glass fiber.[249]
- Material inputs described as "knitted glass fiber," should not be classified under a Malaysian HTS classification which references "woven fibers" or "polyester staple fibers."

No other interested party commented.

Commerce's Position: Zinus described M26, M27, and M28 as knitted glass fiber in its variable summary sheet.[250] The Malaysian HTS classification 7019.51 references "woven fabrics," and the Malaysian HTS classification 6001.92.20 references "polyester staple fibres."

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[246] *See* Zinus 5/2/19 SV Submission at SV2-3.
[247] *See* Zinus May 7, 2019 Submission at Attachment.
[248] For a full discussion on this comment, *see* Zinus Final Analysis Memorandum.
[249] *See* Zinus May 7, 2019 Submission at Attachment.
[250] *Id*.

In contrast, the Malaysian HTS classification 7019.32 specifically references "glass fibers" used in "thin sheets (voiles)" in "webs, mats, mattresses, boards and similar nonwoven products." Because the material description for each M26, M27, and M28 input was described as "fabric-knitted glass fiber," and because these inputs are neither polyester staple fibers nor woven fibers, for the final determination, we will use Malaysian HTS classification 7019.32 to calculate a SV for M26, M27, and M28.[251]
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E. Knitted Jacquard (M29, M31, and M33)

Zinus' Case Brief:

- Commerce selected Malaysian HTS classification 6003.30 for M29, M31, and M33 which is applicable to "knitted or crocheted fabrics of a width not exceeding 30cm."
- Commerce should have assigned Malaysian HTS classification 6006.31.90 to M29, M31, and M33, which is applicable to other knitted or crocheted fabrics over 30 cm in width, of a type not specified in Malaysian HTS headings 6004 (containing elastomeric yarn or rubber thread), or 6005 (warp knit fabrics).
- During verification Commerce verifiers witness that M29, M31, and M33 are greater than 30 cm in width.[252]

No other interested party commented.

Commerce's Position: Zinus described M29, M31, and M33 inputs as "knitted jacquard fabric," each with a width of 230cm in its variable summary sheet.[253] Additionally, Commerce agrees with Zinus that during verification, we observed that M29, M31, and M33 were greater than 30 cm in width.[254] Malaysian HTS classification 6003.30 includes "Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 6001 or 6002," of synthetic fibers. Additionally, record evidence indicates that Malaysian HTS classification 6006.31.90 refers to "knitted or crocheted fabrics, of synthetic fibers, unbleached or bleached." Therefore, because M29, M31, and M33 are knitted jacquard fabric inputs exceeding 30 cm in width, for the final determination, Commerce has assigned Malaysian HTS classification 6006.31.90 to these inputs rather than to HTS classification 6003.30.[255]

F. Recycled Needleloom Felt (M46)

Zinus' Case Brief:

- Commerce incorrectly assigned Malaysian HTS classification 5602.29 (applicable to "other felt" not impregnated, coated, covered or laminated of textile materials), whereas it should have assigned Malaysian HTS classification 5602.10 which is applicable to needleloom felt and stitch bonded fiber fabrics.

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[251] *See* Zinus Final Analysis Memorandum.
[252] *See* Zinus Verification Report at Exhibit CVE-15 at pages 2-10.
[253] *See* Zinus May 7, 2019 Submission at Attachment.
[254] *See* Zinus Verification Report.
[255] *See* Zinus Final Analysis Memorandum.

- Needleloom felt is produced by needling textile fibres through a basic textile fabric or other material that is more or less hidden by the fibres.[256]
- Commerce's examination of this FOP during the verification proves that needleloom felt is needle-punched felt, rendering it difficult to detach.[257]

Petitioners' Rebuttal Brief:

- The description of M46 as being of a needle-punched construct was only first presented as new factual information at the verification and should be used to classify the material input.
  - Zinus' section D response, first supplemental D response, second supplemental D response, and third supplemental response, as well as all of its surrogate value (SV) submissions identify its felt input as being "recycled felt".[258]
  - Zinus had access and knowledge to such physical descriptions of M46 but chose to withhold such details during the questionnaire phase.

Commerce's Position: Zinus' material description for M46 is "Fabric-Recycled Felt."[259] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 5602.29) is "Felt, Whether Or Not Impregnated, Coated, Covered Or Laminated, Felt Nesoi, Not Impregnated, Coated, Covered Or Laminated, Of Textile Materials, Nesoi." The GTA description for Zinus' proposed Malaysian HTS classification (*i.e.*, 5602.10) is "Felt, Whether Or Not Impregnated, Coated, Covered Or Laminated, Needleloom Felt And Stitch-Bonded Fiber Fabrics, Whether Or Not Impregnated, Coated, Covered Or Laminated." Further, during verification, we examined M46 and confirmed that the felt was in fact needle-punched.[260] We disagree with the petitioners' claim that this is new factual information. During verification, Zinus provided this information to support its reported material description as well as its proposed Malaysian HTS classification.[261]

Therefore, for the final determination, we are revising the Malaysian HTS classification assigned to M46. Specifically, we are assigning Malaysian HTS classification 5602.10 ("Needleloom Felt And Stitch-Bonded Fiber Fabrics, Whether Or Not Impregnated, Coated, Covered Or Laminated") to M46 as this classification is more specific.

G. Sewing Thread (M62 and M63)

Zinus' Case Brief:

- Commerce incorrectly assigned Malaysian HTS 5511.10 (applicable to yarn of artificial staple fibres, *put up for retail sale*) to M62 and M63, whereas it should have assigned Malaysian HTS classification 5509.22 which is applicable to yarn of synthetic staple fibres *not put up for retail sale*.
  - M62 and M63 are, by definition, not put up for retail sale.

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[256] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-4
[257] *See* Zinus Verification Report at Exhibit CVE-15 at pages 2-9.
[258] *See* Zinus May 7, 2019 Submission at Attachment.
[259] *Id*.
[260] *See* Zinus Verification Report.
[261] *Id*.

- The reported weights of M62 and M63 indicate that they were designed for use in production rather than for retail sales.[262] M62 and M63 contain 85 percent or more by weight of polyester staple fibres.[263]
- Because Commerce stated that there were "no discrepancies between the plant tour and with the information that Zinus had submitted on the record," the reported weight of Zinus' sewing material was verified by Commerce.

Petitioners' Rebuttal Brief:

- Zinus reported several material descriptions for M62 and M63. Only one of these descriptions contains a term shared by Zinus's assertion that M62 and M63 contain 85 percent or more by weight of polyester staple fibres.
- The cite referenced by Zinus to support its claim that M62 and M63 contain "85 percent or more by weight of polyester staple fibers" is the GTA description of Malaysian HTS classification 5509.12, not Zinus' reported material description of M62 and M63.

Commerce's Position: Zinus asserts that inputs M62 and M63 contain "85 percent or more by weight of polyester staple fibres."[264] However, the exhibit to which Zinus cites regarding the polyester staple fiber content of M62 and M63 is simply a description of Zinus's proposed HTS classifications (550912 and 550922) for M62 and M63. The aforementioned exhibit does not contain explicit, specific descriptions of the actual M62 and M63 inputs.[265] Furthermore, although Zinus claims that M62 and M63 contain "85 percent or more by weight of polyester staple fibres," only one of the material specifications provided by Zinus for M62 and M63 potentially fits the above specification.[266]

Additionally, the record does not indicate that the reported weights of M62 and M63 were designed for use in production rather than for retail sales. Zinus asserts that the record explicitly includes, for example, material descriptions for raw materials clearly indicating that the sewing material was of a certain weight, thus clearly designating it for use in production rather than for retail sales.[267] However, the exhibit to which Zinus cites provides several material specifications of M62 and M63,[268] and only one of these specifications contains any indication of weight. Accordingly, the material specifications provided by Zinus neither indicate the weight by volume of polyester nor demonstrate that the composition of M62 and M63 mean that they are designed for uses in production rather than for retail sales. Thus, there is no basis for Commerce to revise its selection of the Malaysian HTS classification assigned to M62 and M63 for the final determination. Accordingly, for the final determination, we will continue to value M62 and M63 with HTS classification 5511.10.

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[262] *See* Zinus Verification Report at 9; *see also See* Zinus May 7, 2019 Submission at Attachment.
[263] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-3.
[264] *Id*.
[265] *Id*.
[266] *See* Zinus May 7, 2019 Submission at Attachment.
[267] *Id*.
[268] *Id*.

H. Outsourced Foam (M52)

Petitioners' Case Brief:

- Commerce improperly relied on a Malaysian HTS classification for a finished mattress to value foam, which is a raw material used to produce certain mattresses.
- CBP rulings on the record demonstrate that foam products (similar to Zinus' input) that are used to produce other articles are properly classified in Chapter 39.[269]
- The Malaysian SV for mattresses is aberrational.
  - The SV for foam (*i.e.*, 2.53 Malaysian Ringette (MYR)/piece) is less than the value of a kilogram of TDI (17.05 MYR/kg) or MDI (15.72 MYR/kg) (*i.e.*, raw materials used to produce mattress foam).[270]
  - The SV is calculated based on imports from Singapore and the U.S., *i.e.,* 1.796 MYR/piece and 489.33 MYR/piece (respectively). A finished mattress or outsourced foam must cost more than 1.796 MYR/piece.
  - Should Commerce continue to classify foam as a finished mattress, it should exclude the Singapore imports into Malaysia and rely on the value of the imports from the United States.

Zinus' Rebuttal Brief:

- Petitioners propose various Malaysian HTS classifications within Chapter 39 to value foam.
- WCO Chapter 39 Note 10 states that "in headings 3920 and 3921, the expression 'plates, sheets, film, foil and strip' applies only to plates, sheets, film, foil and strip (other than those of Chapter *5424***)** and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use)."[271]
- There is no record evidence that illustrates that foam consists of "plates, sheets, film, foil, or strip" or that it refers to "blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut, or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use)."
- There is no record evidence that foam is *not* further worked (*e.g.*, by corrugating, and/or by gluing multiple pieces together). Foam consists of multiple layers.[272]
- Petitioners compare the Singapore value to the U.S. value for average unit value (AUV) to conclude that the Singaporean value must be aberrational, a closer examination of the data suggests, that it is the U.S. value that is distorted.
  - The quantity associated with the U.S. value is only 12, which is lower than any other line item contained in the data, and significantly lower than the 8000 pieces associated with Singapore.
  - The U.S. value is the *highest* of all line items, a full $144 per piece higher than the next highest line item.

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[269] *See* Petitioners May 13, 2019 SV Submission at Exhibit 1.
[270] *See* Zinus Preliminary Analysis Memorandum at Attachment VI.
[271] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-3.
[272] *See* Zinus May 7, 2019 Submission at Attachment.

- The Singaporean line item contains the second highest quantity of all line items, and (unlike the U.S. line item) falls *within* the range of AUVs for all other line items.

Commerce's position: Zinus' material descriptions for M52 is "Outsourced Foam."[273] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 9404.21.20) is "Mattresses Of Cellular Rubber Or Plastics, Whether Or Not Covered, Of Cellular Rubber Or Plastics, Whether Or Not Covered: Of Cellular Plastics, Whether Or Not Covered." The GTA description for the petitioners' proposed Malaysian HTS classifications (*i.e.*, 3919.90, 3920.10, 3920.20,, 3921.13, and 3921.19) is "Plates, Sheets, Film, Foil, Tape And Other Flat Shapes Of Plastics, Self-Adhesive, Nesoi," "Plates, Sheets, Film, Foil And Strip Of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Or Laminated Etc., Of Polymers Of Ethylene," "Plates, Sheets, Film, Foil And Strip Of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Or Laminated Etc., Of Polymers Of Propylene," "Plates, Sheets, Film, Foil And Strip Of Plastics Nesoi, Cellular Polyurethanes," and "Plates, Sheets, Film, Foil And Strip Of Plastics Nesoi, Cellular Plastics Nesoi," respectively.

As noted by Zinus, the HTSUS explanatory notes states:

> "in headings 3920 and 3921, the expression 'plates, sheets, film, foil and strip' applies only to plates, sheets, film, foil and strip (other than those of Chapter *5424*) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use)."[274]

We agree with Zinus that there is no record evidence that illustrates that foam consists of "plates, sheets, film, foil, or strip" or that it refers to "blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut, or cut into rectangles (including squares)." We also agree with Zinus that there is no record evidence that M52 is not "further worked (even if when so cut they become articles ready for use)." During verification, we examined M52 and confirmed that it is a semi-finished mattress consisting of several layers of foam that have been adhered to each other. In some cases, the top layer of foam has been cut into a specific pattern.[275] Therefore, based on our examination at verification and Zinus material description, M52 is a semi-finished mattress, made up of several foam layers.

Further, we also disagree with the petitioners' claim that the SV for M52 is aberrational. Outside of pointing out that the foam SV used in the *Preliminary Determination* is less expensive than certain chemical inputs used to produce foam, the petitioners have not provided any specific evidence as to why the SV is aberrational. As stated previously, "{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce."[276] Here, the petitioners

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[273] *Id.*
[274] *Id.*
[275] *See* Zinus Verification Report at CVE-15.
[276] *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011)

have failed to meet this burden. The existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and parties must provide specific evidence showing that the value is aberrational.[277]

Furthermore, the petitioners state that should Commerce continue to use Malaysian HTS classification 9404.21.20 to value M52, it should exclude Indonesian imports from Singapore. However, excluding certain imports from our valuation of M52 would contradict Commerce's clear and well-established practice of using the full GTA Data,[278] and would invite endless and distortive cherry picking of data. Commerce has "found WTA import data to represent the best information available for valuation purposes because when taken as a whole -- after excluding non-market, unspecified, and subsidized data points -- they represent an average of multiple price points within a specific period and are tax-exclusive."[279]

Additionally, the petitioners provided CBP rulings that they claim demonstrate that foam products (similar to Zinus' input) are properly classified in Chapter 39.[280] However, the CBP rulings pertain to eight-digit HTSUS classifications. Commerce notes that HTS classifications between countries are identical only to the six-digit level. Thus, the CBP rulings provided by petitioners are not applicable to Malaysian HTSs. Based on the above analysis, we are not revising the Malaysian HTS classification assigned to M52. Therefore, for the final determination, we continue to find that Malaysian HTS classification 9404.21.20 ("Mattresses Of Cellular Rubber Or Plastics, Whether Or Not Covered, Of Cellular Rubber Or Plastics, Whether Or Not Covered: Of Cellular Plastics, Whether Or Not Covered") is the best information to value M52 based on the reported FOP description.

I. Bonnel Springs and Pocket Springs (collectively innersprings)

Petitioners' Argument:

- Commerce improperly assigned Malaysian HTS classification 9404.10 ("Mattress supports") to Zinus' mattress innersprings.
- The explanatory notes applicable to HTS classification 9404 describe mattress supports as "normally consisting of a wooden or metal frame."[281] A "wooden or metal frame" is inflexible, and thus, not suitable for sleep.
- The explanatory notes state that mattress supports are "mattress bases."
- Mattress supports are foundations (sometimes referred to as box springs) placed below a mattress, not the innerspring unit that goes into a mattress.

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[277] *See Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Steel Wire Garment Hangers 2012-2013*), and accompanying IDM at Comment 5; *see also Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (*CVP 23 from China*) and accompanying IDM at Comment 6.

[278] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 35245 (June 12, 2013), and accompanying IDM at Issue 2.A.

[279] *Id.*

[280] *See* Petitioners May 13, 2019 SV Submission at Exhibit 1.

[281] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-3.

- HTS classification 9404.29 contains eight-digit subheadings applicable to "Uncovered innerspring units."[282]
- As it did for Healthcare, Commerce should assign Malaysian HTS classification 7320.90.90 to Zinus' innersprings.
    - HTS classification 7320.90 includes springs "suitable for use in mattress supports and mattresses of heading 9404."[283]
- When compared to the SV assigned to Healthcare's innerspring input (*i.e.*, 54.59 MYR/KG), to the SV for Zinus' innersprings (*i.e.*, 6.59 MYR/KG) is aberrational.
    - Commerce has assigned a SV of 6.59 MYR/KG (for completed innerspring units comprised of individual springs) to Zinus while assigning a SV of 54.59 MYR/KG (individual springs) to Healthcare for the same FOP.

Zinus' Rebuttal:

- Innersprings are spring unit assemblies which are "the sprung part of a bed." Malaysian HTS classification 9404 is applicable regardless of whether the innersprings are contained in a wooden frame under a mattress or inside the mattress.
- Petitioners' assertion that "mattress supports" are foundations, sometimes referred to as box springs placed below a mattress, is unsupported by record evidence.
- There is nothing in explanatory notes for HTS classification 9404 that limits the definition to box springs or separate articles of commerce.
- The use of "normally" in explanatory notes for HTS classification 9404 recognizes that beds may not be constructed from the more traditional two-piece unit (mattress and box spring), but with innerspring units bonded directly to the foam layers to form one unit (such as Zinus' mattresses).
- Zinus purchases spring assemblies, and does not manufacture individual spring units, that would be classified under Malaysian HTS chapter 73 ("articles of iron or steel").

Commerce's Position: Zinus describes innersprings as "Bonnel Spring" and "Pocket Spring."[284] During verification, we saw that Zinus' innersprings were purchased assemblies and not individual purchased or produced springs.[285] The GTA description for the Malaysian HTS classification we selected at the *Preliminary Determination* (*i.e.*, 9404.10) is "Mattress Supports; Articles Of Bedding And Similar Furnishings With Springs Or Stuffed Or Internally Fitted With Material Or Of Rubber Or Plastics, Mattress Supports." The explanatory notes for HTS classification 9404 state the following:

> According to the terms of the heading 9404, "mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered' are classified in this heading. More specifically, 9404 covers 'Mattress supports, *i.e.*, the sprung part of a bed, normally consisting of a wooden or metal frame fitted

[282] *See* Petition at Exhibit 6.
[283] *See* petitioners 5/2/19 SV Submission at Exhibit 11.
[284] *See* Zinus May 7, 2019 Submission at Attachment.
[285] *See* Zinus Verification Report at CVE-15.

> with springs or steel wire mesh (spring or wire supports), or of a wooden frame with internal springs and stuffing covered with fabric (mattress bases)" according to the explanatory note of the heading 9404.[286]

After reviewing the GTA description of HTS classification 9404 and the HTS explanatory notes concerning mattress supports for HTS classification 9404 and comparing the descriptions to Zinus' material descriptions, Commerce determines that HTS classification 9404 is not the proper HTS classification for valuing Zinus' innersprings (*i.e.*, FOPs M69 and M70). The GTA description for HTS 9404 contained in the explanatory notes states that "mattress supports; articles of bedding and similar furnishing (for example, *mattresses*, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs" (emphasis added) are included in HTS classification 9404. The GTA description specifically covers mattresses fitted with springs, *i.e.*, subject mattresses, while innersprings are not subject merchandise, but raw materials used in the production of subject merchandise.

Zinus further claims that there is nothing in the GTA description or explanatory notes for HTS classification 9404 that limit it to box springs or separate articles from mattresses.[287] We agree with Zinus, in part. The GTA description states that mattresses, quilts, eiderdowns, cushions, pouffes and pillows are all examples of "mattress supports." Therefore, HTS classification 9404 is not limited to box springs. However, we disagree with Zinus' claim that "mattress supports" are not separate articles from mattresses. As stated by the petitioners, the explanatory notes for HTS classification 9404 state that mattress supports are "mattress bases." Commerce is conducting an investigation on mattresses which are final completed products (*i.e.*, subject merchandise). The term "Mattress Support" indicates that this HTS classification covers products that "support," and are separate from, mattresses (or the final products subject to the investigation), not a raw material used in the production of mattresses. There is nothing in the GTA description or the HTS explanatory notes for HTS classification 9404 that suggests that "mattress supports" could be a raw material used in the production of mattresses.

Further, the explanatory notes for HTS classification 9404 provide further clarification for "mattress supports." Specifically, the explanatory notes state that mattress supports are "the sprung part of a *bed*" (emphasis added). Zinus claims that innersprings are "the sprung part of a bed."[288] However, the explanatory notes clarify that mattress supports are the sprung part of a bed, not the sprung part of a mattress, thereby, differentiating a bed from a mattress. Moreover, Zinus has recognized this difference when it stated that "beds may not be constructed from the more traditional two-piece unit (mattress and box spring)." Consequently, as stated above, innersprings are the raw material used in the production of mattresses, not beds, and thus, cannot be considered a "mattress support" under HTS classification 9404.

Zinus argues that use of the word "normally" in the explanatory notes recognizes that beds may not be constructed from the more traditional two-piece unit (mattress and box spring), but with innerspring units bonded directly to the foam layers to form one unit (such as Zinus'

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[286] *See* Zinus 5/2/19 SV Submission at Exhibit SV2-3.
[287] *See* Zinus Rebuttal Brief at 8-10.
[288] *Id*.

mattresses).[289] However, the use of the word "normally" in this case is immaterial. As stated above, the explanatory notes for HTS classification 9404 provide a further description of "mattress supports." The term "Mattress Support" indicates that this HTS classification covers products that "support," and are separate from, mattresses (the final product subject to this investigation), not a raw material used in the production of mattresses, such as, Zinus' innersprings. Based on the above analysis, for the final determination, Commerce finds that innersprings are not classifiable under HTS classification 9404.10.[290]

Petitioners state that Commerce should use Malaysian HTS classification 7320.90.90 to calculate a SV for Zinus' innersprings. The GTA description of Malaysian HTS classification 7320.90.90 is "Springs And Leaves For Springs, Of Iron Or Steel, Springs Nesoi, Of Iron Or Steel, O/T Leaf-Springs And Leaves Therefor: And Helical Springs: O/T Suitable For Use On Motor Vehicles." Zinus describes innersprings as both "bonnel springs' and "pocket springs" and during verification we saw that innersprings are spring assemblies."[291] We agree with Zinus that it purchases spring assemblies and does not manufacture individual spring units. However, based on record evidence, we found that Zinus' innersprings are not classifiable under Malaysian HTS classification 9404.10. As a result, the best available data on the record to calculate a SV for Zinus' innersprings is Malaysian HTS classification 7320.90.90 as described above. Therefore, for the final determination, we will value Zinus' innersprings using Malaysian HTS classification 7320.90.90.[292]

J. Polyethylene Film (P04)

Zinus' Argument:

- Commerce (without explanation) selected Malaysian HTS classification 3920.10 to value P04, which is less specific than Zinus' proposed Malaysian HTS classification (*i.e.*, 3920.10.90).
- Absent specific record information contradicting the information placed on the record by Zinus, Commerce should accept the more specific classification.

Petitioners' Rebuttal:

- Zinus has offered no explanation why Malaysian HTS classification 3920.10.90, an "other" category, is a more specific Malaysian HTS classification to value P04.
- The only description Zinus has provided for this input is polyethylene film.

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[289] *Id.*

[290] Petitioners states that HTSUS classification 9404.29 contains further eight-digit subheadings applicable to "uncovered innerspring units." Commerce notes that HTS classifications between countries are identical only to the six-digit level. Thus, the GTA description provided by petitioners is not applicable to the Malaysian HTS.

[291] *See* Zinus May 7, 2019 Submission at Attachment.

[292] *See* Zinus Final Analysis Memorandum. Petitioners claim that HTSUS classification 7320.90 includes springs "suitable for use in mattress supports and mattresses of heading 9404." However, the GTA description referenced by petitioners is for the 10-degit HTSUS classification 7320.90.50.10 ("Of wire: Suitable for use in mattress supports and mattresses of heading 9404.") Commerce notes that HTS classifications between countries are identical only to the six-digit level. Thus, the GTA description provided by petitioners is not applicable to the Malaysian HTS classification 7320.90. Furthermore, petitioners argue that the SV for Zinus' innersprings from the *Preliminary Determination* (*i.e.*, 6.59 MYR/KG) is aberrational. However, because Commerce determined that Malaysian HTS classification 7320.90.90 is appropriate to value Zinus' innersprings for the final determination, this argument is moot.

- Malaysian HTS classification 3920.10, covers “Plates, Sheets, Film, Foil And Strip Of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Or Laminated Etc., Of Polymers Of Ethylene.”

Commerce’s Position: Similar to Comment I.A above, Zinus has again stated that a Malaysian HTS classification (3920.10) selected by Commerce and assigned to P04 is less specific without any argument or the support of any record evidence. Specifically, in its case brief, Zinus did not provide any argument as to why its proposed Malaysian HTS classification is more specific to its FOPs, nor did it provide any argument to support its contention that the Malaysian HTS classification selected by Commerce is less specific to P04.

Although Zinus has not provided any argument or evidence to support its claim, Commerce has reviewed its selection of a Malaysian HTS classification to value P04. Zinus’ material description for P02 is “Polyethylene FILM.”[293] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 3920.10) is “Plates, Sheets, Film, Foil And Strip Of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Or Laminated Etc., Of Polymers Of Ethylene.” The GTA description of Zinus’ proposed Malaysian HTS classification (*i.e.*, 3920.10.90) is “Plates, Sheets, Film, Foil And Strip Of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Or Laminated Etc., Of Polymers Of Ethylene, O/T Plates And Sheets.” Zinus stated that P02 is polyethylene film and has not provided any evidence that its polyethylene film is not in the form of plates or sheets. Thus, for the final determination, we will continue to value P04 using Malaysian HTS classification 3920.10.90.

K. Handle (P09)

Zinus’ Argument:
- Commerce (without explanation) selected a Malaysian HTS classification (*i.e.*, 3926.30 which is applicable to plastic fittings “for furniture, coachwork or the like,”) to value P09, which is less specific than Zinus’ proposed Malaysian HTS classification (*i.e.*, 3926.90.99 which is applicable to other plastic articles not elsewhere specified).
- Zinus’ plastic box handles are not plastic fittings “for furniture, coachwork or the like.”
- P09 is the handle to a cardboard box, not a furniture handle.[294]

Petitioners’ Rebuttal:
- Malaysian HTS classification 3926.30 (“Fittings For Furniture, Coachwork Or The Like, Of Plastics.”) fits the material descriptions provided by Zinus. *i.e.*, “handle”, “other” and “packing material.”[295]
- Verification Exhibit CVE-15 does not contain any evidence P09 is a packing handle.
- Zinus, not Commerce is responsible to support the physical description of its inputs.

[293] *See* Zinus May 7, 2019 Submission at Attachment.
[294] *See* Zinus Verification Report at Exhibit CVE-15 at 2-3.
[295] Zinus First Supplemental D at Exhibit SD2-1. See also Zinus SV Submission at SV2-1.

- Verification is "to verify what is already on the record, not an opportunity to submit new information."[296]

Commerce's Position: Zinus' material descriptions for P09 is "Packing-Sub Material, "HANDLE," "HANDLE (Other article of plastic)."[297] The GTA description for the Malaysian HTS classification selected by Commerce at the *Preliminary Determination* (*i.e.*, 3926.30) is "Fittings For Furniture, Coachwork Or The Like, Of Plastics." The GTA description of Zinus' proposed Malaysian HTS classification (*i.e.*, 3926.90.99) is "Articles Of Plastics, Nesoi, Other Than Of A Kind Used For Grain Storage And Empty Capsules Of A Kind Suitable For Pharmaceutical Use."

Zinus described P09 as a packing sub-material that is a plastic handle. Therefore, P09 does fit the GTA description for the Malaysian HTS classification selected at the Preliminary Determination, *i.e.*, "Fittings For Furniture, Coachwork Or The Like, Of Plastics." During verification, we examined P09 and it is in fact a plastic handle used for packing. Thus, we disagree with the petitioners' contention that this is new factual information. During verification, Zinus provided this information to support its reported material description for P09 as well as its proposed Malaysian HTS classification. Therefore, we find that the description provided at verification is not new factual information. For the final determination we will value P09 using Malaysian HTS classification 3926.90.99.

Comment 12: Zinus' Per-Unit Calculation of Water

Zinus' Case Brief:

- Commerce inadvertently applied the wrong unit of measure in the calculation of the water SV for Zinus. Commerce recognized the error in its ministerial error memorandum.[298]
- The water rates reflected in the National Water Services Commission are listed in MYR per meter cubed (M^3), which is the equivalent of one metric ton.[299]
- Zinus reported water in kilograms per piece.[300]

No other interested party commented.

Commerce's Position: We agrees with Zinus that we inadvertently applied the wrong unit of measure in the calculation of the water SV for Zinus. Furthermore, we have already addressed

[296] *Steel Wire Garment Hangers 2012-2013*, and accompanying IDM at Comment 1. *See also Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) ("the burden of creating an adequate record lies with respondents and not with Commerce").
[297] *See* Zinus May 7, 2019 Submission at Attachment.
[298] *See* Memorandum, "Less-Than-Fair-Value Investigation of Mattresses from the People's Republic of China: Allegation of Ministerial Errors in the Preliminary Determination," dated July 3, 2019 (Ministerial Error Memorandum).
[299] *See* Petitioners' March 18, 2019 Surrogate Value Submission at Exhibit 9.
[300] *See* Zinus' May 20, 2019 Supplemental Questionnaire Response (Zinus May 20th SQR) at Exhibit SACD-5.

this error in the Preliminary Ministerial Error Memorandum.[301] Specifically, we stated "We agree with Zinus that the above noted discrepancy constitutes a ministerial error within the meaning of 19 CFR 351.224(f)."[302] The water rate from the National Water Services Commission (SPAN) Malaysia is reported in cubic meters.[303] However, Zinus reported its water FOP in kilograms per mattress,[304] and we applied the SPAN water SV to Zinus' water FOP without applying a conversion factor."[305] Therefore, for the final determination, Commerce will correct the error by using the correct per-unit measure (*i.e.*, M^3) and applying a conversion factor.[306]

Comment 13: Zinus' Direct Expenses Calculation

Zinus' Case Brief:

- Commerce inadvertently included the M^3 per finished mattress unit, reported in field 25.3 under the field CBMU, in its calculation of total direct expenses for U.S. net price.[307] The acronym CBM is commonly understood to refer to cubic meters.
- Zinus states that "{f}or CEP inventory sales, Zinus has added this field to report the per-unit CBM for each product code. For EP and back-to-back CEP sales, Zinus has left this field blank."[308]
- Zinus reported the units in the "label" column for field CBMU as "(CBM/Unit)," and not as a currency per unit.
- Zinus did not identify this field as a movement expense in its questionnaire responses.
- Commerce recognized this error in its July 3, 2019 ministerial error memorandum.[309]

No other interested party commented.

Commerce's Position: We agree with Zinus that we inadvertently included the M^3 per finished mattress unit, reported in field 25.3 under the field CBMU, in its calculation of total direct expenses for U.S. net price. As stated by Zinus, Commerce has already addressed this error in the Ministerial Error Memorandum. Specifically, we stated "{w}e agree with Zinus that the deduction of the per-unit volume in the CEP calculation constitutes a ministerial error within the meaning of 19 CFR 351.224(f). Specifically, in the preliminary determination, we inadvertently treated the unit volume per mattress as a selling expense and subtracted it from CEP."[310]

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[301] *See* Memorandum, "Less-Than-Fair-Value Investigation of Mattresses from the People's Republic of China: Allegation of Ministerial Errors in the Preliminary Determination," dated July 3, 2019 (Ministerial Error Memorandum).
[302] *Id.* at 3-4.
[303] *See* Memorandum, "Preliminary Determination of the Antidumping Duty Investigation of Mattresses from the People's Republic of China: Surrogate Value Memorandum," dated May 28, 2019 at Attachment II.
[304] *See* Zinus' May 20, 2019 Supplemental Questionnaire Response (Zinus May 20th SQR) at Exhibit SACD-5.
[305] *See* Zinus Preliminary Analysis Memorandum at Attachment VI.
[306] *See* Zinus Final Analysis Memorandum.
[307] *See* Zinus Preliminary Analysis Memorandum at Attachment III.
[308] *See* Zinus February 27, 2019 Section C Questionnaire Response (Zinus February 27, 2019 CQR) at 47.
[309] *See* Ministerial Error Memorandum.
[310] *Id.* at 3.

Therefore, for the final determination, Commerce will remove CBMU from our calculation of total direct expenses for U.S. net price.[311]

Comment 14: Zinus' Cash Deposit Instructions

Zinus' Case Brief:

- Commerce should amend its cash deposit instructions to reflect Zinus Inc. as the exporter.
- Commerce did not define the term "exporter" in the separate rate application (SRA) or in any of its questionnaires during the course of this investigation.
- Zinus' SRA states that "{i}n all cases" Zinus invoices Zinus Inc. in Korea, which in turn, invoices affiliated or unaffiliated U.S. customers.[312]
- Zinus' SRA contains sales documents that demonstrate Zinus Inc. is the invoicing party upon importation and Zinus Inc. is listed as the exporter in the bill of lading.[313]
- Zinus explained the following in its responses: 1) "as is evident in this response and previous submissions to the Department, all merchandise produced and sold by Xiamen is first sold to Zinus KR" prior to export, 2) "in no instances" did Zinus make sales to U.S. customers, and 3) "all U.S. sales were made through Zinus KR, and in all instances Zinus KR purchased the mattresses under investigation from Xiamen (which either produced the mattress or purchased it from {affiliated producer Zinus Zhangzhou Inc.})."[314]

No other interested party commented.

Commerce's Position: We agree with Zinus. For the final determination, we find that Zinus Xiamen Inc. and Zinus Inc. are a single entity, along with Zinus Zhangzhou Inc. Accordingly, the cash deposit instructions for the final determination will list Zinus Xiamen Inc., Zinus Zhangzhou Inc., and Zinus Inc. as a single entity, with respect to the merchandise produced by Zinus, and exported to the United States by Zinus Inc. For details regarding Commerce's determination, *See* Zinus Affiliation Memo.[315]

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[311] *See* Zinus Final Analysis Memorandum.
[312] *See* Zinus' November 26, 2018 Separate Rate Application (Zinus SRA).
[313] *See* Zinus SRA at 5 and Exhibit 1.
[314] *See* Zinus' February 13, 2019 Section A Response at A-19; *see also* Zinus February 27, 2019 CQR at C-1.
[315] *See* Memorandum, "Antidumping Duty Investigation of Mattresses from the People's Republic of China: Final Determination of Affiliation/Single Entity Treatment of Zinus Xiamen Inc., Zinus Zhangzhou Inc., and Zinus Inc.," dated concurrently with this memorandum (Zinus Affiliation Memo).

VII. RECOMMENDATION

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

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Agree Disagree

10/17/2019

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance