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Administrative Review
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November 20, 2020

MEMORANDUM TO: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

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

SUBJECT: Issues and Decision Memorandum: Antidumping Duty
Administrative Review and New Shipper Review of Multilayered
Wood Flooring from the People's Republic of China; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the case and rebuttal briefs submitted by interested parties in the administrative review (AR) of the antidumping duty (AD) order on multilayered wood flooring (wood flooring) from the People's Republic of China (China) covering the period of review (POR) December 1, 2017 through November 30, 2018.¹ The mandatory respondents are Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Products Co., Ltd. (collectively, Jinlong) and Jiangsu Guyu International Trading Co., Ltd. (Guyu). As a result of this analysis, we have made certain changes to the *Preliminary Results*.² We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is a complete list of the issues in this AR for which we received comments from parties:

General Issues

Comment 1: Whether to Revise the Surrogate Financial Ratios
Comment 2: Whether to Revise the Surrogate Value for Labor
Comment 3: Whether to Revise the Surrogate Value for Inland Freight

¹ No interested parties submitted briefs on the new shipper review aligned with this administrative review. Therefore, the issues discussed in this memorandum pertain only to the AR.

² See *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2017-2018*, 85 FR 6911 (February 6, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



Comment 4: Whether to Revise the Surrogate Value for Glue

Guyu Issues

Comment 5: Whether to Continue to Assign a Separate Rate to Guyu

Comment 6: Whether to Revise the Surrogate Value for Thinner

Comment 7: Whether to Revise the Surrogate Value for Aluminum Paste

Non-Selected Company Issues

Comment 8: Whether Commerce Should Have Selected Senmao as a Voluntary Respondent

Comment 9: Whether to Rescind the Administrative Review as to Baroque

Comment 10: Whether Certain Companies Filed Proper No Shipment Certifications

Comment 11: Whether Homebon Had Shipments

Comment 12: Whether to Continue to Apply a Zero Dumping Margin to the Separate Rate Companies

II. BACKGROUND

On February 6, 2020, Commerce published the *Preliminary Results*. On February 18, 2020, we issued a supplemental questionnaire to Jinlong, to which Jinlong responded on February 21, 2020.³ On March 6, 2020, we issued a supplemental questionnaire to Guyu, to which Guyu responded on March 20, 2020.⁴

On April 24, 2020, Commerce tolled all deadlines in ARs by 50 days, thereby extending the deadline for these final results until July 27, 2020.⁵ On June 5, 2020, we extended the deadline of this AR from July 27, 2020, to September 23, 2020.⁶ On July 21, 2020, Commerce tolled all deadlines in ARs by an additional 60 days.⁷ The deadline for the final results of this review is now November 23, 2020.

Commerce held a public hearing concerning case-specific issues on October 21, 2020.⁸

In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on the *Preliminary Results*. The following parties submitted case briefs: Omni Arbor Solution Co., Ltd. (Omni);⁹ the

³ See Jinlong's February 21, 2020 Supplemental Questionnaire Response.

⁴ See Guyu's March 20, 2020 Supplemental Questionnaire Response.

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020. If the new deadline falls on a weekend or a federal holiday, in accordance with our regulations, the deadline will be moved to the next business day. As the actual (tolled) deadline was Saturday, July 25, 2020, the next business day was Monday, July 27, 2020.

⁶ See Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review and New Shipper Review," dated June 5, 2020. As the actual (tolled) deadline was Saturday, July 25, 2020, we are extending the final results deadline 60 days from this date.

⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁸ See Submission of Neal R. Gross and Co., Transcript of Public Hearing, filed October 21, 2020.

⁹ See Omni's Letter, "Multilayered Wood Flooring from China: Case Brief - Omni Arbor Solution Co., Ltd.," dated March 10, 2020; see also Omni's Letter, "Multilayered Wood Flooring from the People's Republic of China Request for Review," dated December 31, 2018." In the *Preliminary Results*, Commerce inadvertently identified Omni as

American Manufacturers of Multilayered Wood Flooring (the petitioner); Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao); Zhejiang Biyork Wood Co., Ltd., Zhejiang Simite Wooden Co., Ltd., Zhejiang Jiechen Wood Industry Co., Ltd, and Dalian Jaenmaken Wood Industry Co., Ltd. (collectively, Biyork *et al.*); Baroque Timber Industries (Zhongshan) Co., Ltd. (Baroque); and Guangzhou Homebon Timber Manufacturing Co., Ltd. (Homebon).¹⁰ In addition, parties submitted letters in lieu of case briefs incorporating by reference the arguments submitted in case briefs by other parties and/or submitted that Commerce should continue to apply a zero margin to the non-selected respondents.¹¹

The petitioner, Jinlong, and Guyu submitted rebuttal briefs.¹² Parties also submitted rebuttal briefs incorporating by reference the rebuttal arguments submitted by other parties.¹³ Neither the petitioner, Muchsee Wood (Chuzhou) Co., Ltd., nor any other interested party submitted case briefs regarding the aligned new shipper review of the AD order on wood flooring from China.

“Omni Arbor Solutions Co., Ltd.” However, the correct spelling of this company’s name is “Omni Arbor Solution Co., Ltd.” Accordingly, Commerce is correcting the spelling of this company name in these final results.

¹⁰ See Petitioner’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: Case Brief” (Petitioner’s Case Brief); Senmao’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: Case Brief” (Senmao’s Case Brief); Baroque’s Letter, “Letter in Lieu of Case Brief for Baroque Timber Industries (Zhongshan) Co., Ltd. in the Seventh Antidumping Duty Administrative Review of the Antidumping Order on Multilayered Wood Flooring from the People’s Republic of China” (Baroque’s Letter); and Homebon’s Letter, “Multilayered Wood Flooring from the PRC: Homebon Letter in Lieu of Case Brief” (Homebon’s Letter), all dated July 8, 2020; *see also* Biyork *et al.*’s Letters, “Multilayered Wood Flooring from the People’s Republic of China, A-570-970; Case Brief,” dated March 30, 2020, and “Multilayered Wood Flooring from the People’s Republic of China, A-570-970; Re-Submitted Case Brief,” dated July 8, 2020 (Biyork *et al.*’s July 8, 2020, Case Brief).

¹¹ See Mudanjiang Bosen Wood Industry Co., Ltd., Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd., Shenyang Haobainian Wooden Co., Ltd., Metropolitan Hardwood Floors, Inc., Galleher LLC, and Galleher Corp.’s Letter (Mudanjiang *et al.*), “Multilayered Wood Flooring from the People’s Republic of China: Submission of Comments on the Preliminary Determination in Lieu of Filing an Administrative Case Brief,” dated July 8, 2020; *see also* Struxtur, Inc. and Evolutions Flooring, Inc.’s (Struxtur and Evolutions) Letter, “Multilayered Wood Flooring from the People’s Republic of China Case Brief,” dated July 8, 2020.

¹² See Petitioner’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: Rebuttal Brief” (Petitioner’s Rebuttal Brief); Jinlong’s Letter, “Multilayered Wood Flooring from the People’s Republic of China -- Rebuttal Brief”; and Guyu’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: Jiangsu Guyu International Trading Co., Ltd.’s Rebuttal Case Brief” (Guyu’s Rebuttal Brief), all dated July 15, 2020.

¹³ See Letters from Anhui Yaolong Bamboo & Wood Products Co., Ltd., Senmao, Jiangsu Keri Wood Co., Ltd., and Sino-Maple (Jiangsu) Co., Ltd., “Multilayered Wood Flooring from the People’s Republic of China: Letter in Lieu of Rebuttal Brief”; Huzhou Jesonwood Co., Ltd., Huzhou Sunergy World Trade Co., Ltd., Scholar Home (Shanghai) New Material Co., Ltd., Yekalon Industry, Inc., and Baroque (Huzhou *et al.*), “Letter In Lieu of Rebuttal Brief in the Seventh Antidumping Duty Administrative Review of the Antidumping Order on Multilayered Wood Flooring from the People’s Republic of China”; Mudanjiang *et al.*, “Multilayered Wood Flooring from the People’s Republic of China: Submission of Comments in Lieu of Filing a Rebuttal Brief”; Struxtur and Evolutions, “Multilayered Wood Flooring from the People’s Republic of China Rebuttal Brief”; Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.), “Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People’s Republic of China: Letter in Lieu of Rebuttal Brief,” all dated July 15, 2020.

III. SCOPE OF THE ORDER¹⁴

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)¹⁵ in combination with a core.¹⁶ The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, “engineered wood flooring” or “plywood flooring.” Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

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

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

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made

¹⁴ See *Multilayered Wood Flooring from the People’s Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order*, 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the People’s Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012)

(collectively, *Order*); see also *Multilayered Wood Flooring from the People’s Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders*, 82 FR 27799 (June 19, 2017).

¹⁵ A “veneer” is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

¹⁶ Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS)¹⁷: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

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

IV. AFFILIATION AND SINGLE ENTITY

In the *Preliminary Results*, we collapsed the four Jinlong companies in accordance with 19 CFR 351.401(f)(1).¹⁸ We have not received information contradicting this preliminary determination. Accordingly, for the final results, we are not departing from this preliminary determination to treat these companies as a single entity.

V. CHANGES FROM THE PRELIMINARY RESULTS

¹⁷ On October 31, 2018, we added the following HTS numbers to update the ACE Case Reference File: 4412.33.0640, 4412.33.0665, 4412.33.0670, 4412.33.2625, 4412.33.2630, 4412.33.3225, 4412.33.3235, 4412.33.3255, 4412.33.3275, 4412.33.3285, 4412.33.5700, 4412.34.2600, 4412.34.3225, 4412.34.3235, 4412.34.3255, 4412.34.3275, 4412.34.3285, 4412.34.5700, 4418.74.2000, 4412.74.9000, 4418.75.4000, and 4418.75.7000. See Memorandum “Multilayered Wood Flooring from the People’s Republic of China (A-570-970): Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,” dated October 31, 2018.

¹⁸ See *Preliminary Results*, and accompanying Memorandum, “Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People’s Republic of China; 2017-2018: Affiliation and Collapsing of The Fusong Jinlong Group.”

1. General:

- We revised the surrogate financial ratios.¹⁹
- We converted the surrogate inland freight expense from a per-cubic meter (M³) cost basis to a per-kilogram (KG) cost basis for certain inputs.²⁰
- We made a no shipment determination for Homebon.²¹

2. Jinlong's Margin Calculation:

We corrected the following clerical errors noted by the petitioner in its case brief:

- We converted to U.S. dollars (USD), the gross unit prices for certain U.S. sales not reported in USD.²²
- We corrected certain errors in calculating the value of Jinlong's reported market-economy purchases.²³
- We made an adjustment to the gross unit price for brokerage and handling expenses.²⁴

Upon further review of our preliminary margin calculations for Jinlong, we noted that three market-economy inputs were not properly converted from Euros to USD; we made these currency conversions for the final results.

3. Guyu's Margin Calculation:

We corrected a unit of measure conversion error in calculating international freight charges, noted by the petitioners in their case brief.²⁵

VI. DISCUSSION OF THE ISSUES

¹⁹ See Comment 1; *see also* Memorandum, "Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2017-2018: Surrogate Values for the Final Results," dated concurrently with this memorandum (Final SV Memorandum).

²⁰ See Comment 3; *see also* proprietary versions of Memoranda, "Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2017-2018: Final Results Margin Calculations for Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Products Co., Ltd. (Jinlong Final Calculation Memorandum), and "Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2017-2018: Final Results Margin Calculations for Jiangsu Guyu International Trading Co., Ltd." (Guyu Final Calculation Memorandum), both dated concurrently with this memorandum

²¹ See Comment 11.

²² See Petitioner's Case Brief at 15 – 16; *see also* Jinlong Final Calculation Memorandum.

²³ See Petitioner's Case Brief at 11 – 15; *see also* Jinlong Final Calculation Memorandum.

²⁴ See Petitioner's Case Brief at 16; *see also* Jinlong Final Calculation Memorandum.

²⁵ See Petitioner's Case Brief at 22 – 23; *see also* Guyu Final Calculation Memorandum.

General Issues

Comment 1: Whether to Revise the Surrogate Financial Ratios

*Petitioner's Arguments*²⁶

- To value surrogate financial ratios, the petitioner, Jinlong, and Guyu, submitted the 2018 annual report for Romanian producer Sigstrat S.A. (Sigstrat). For the *Preliminary Results*, Commerce used Sigstrat's annual report relying on Jinlong's calculations, which do not properly allocate costs, resulting in inaccurate financial ratio surrogate values (SVs).
 - The calculated financial SVs for the *Preliminary Results* rely on two pages of Sigstrat's annual report but neglect Note 7, "Analysis of Operating Result," which provides a more accurate calculation of Sigstrat's costs. Specifically, this note reports that, of the Romanian Lei (RON) 30,703,287 cost of goods sold (COGS), RON 8,512,590 are for "Indirect production expenses," *i.e.*, overhead expenses (OH). In the calculation for the *Preliminary Results*, however, only RON 1,890,198 are allocated to OH.
 - Note 7 also reports RON 4,383,473 for "General administrative expenses" (G&A). However, not accounting for financial expenses and income, the calculation for the *Preliminary Results* only allocates RON 1,988,352 to selling, general and administrative (SG&A) expenses.
 - Finally, Note 7 shows that COGS totaled RON 30,703,287; however, the calculation for the *Preliminary Results* only allocates RON 34,464,210 to materials, labor, energy (MLE), and overhead (*i.e.*, COGS), confirming that the financial ratios have not been calculated in a manner consistent with Sigstrat's financial statement.
- For the final results, Commerce should revise its calculations to rely on the financial ratio SV calculations provided by the petitioner.²⁷

*Jinlong's Rebuttal Arguments*²⁸

- Commerce's calculated financial ratios from Sigstrat's annual report for the *Preliminary Results* are consistent with those calculated in past proceedings and Commerce should not change the calculations for the final results.²⁹

²⁶ *Id.* at 3 - 5.

²⁷ *Id.* at Exhibit 1 (citing Petitioner's Letter, "Multilayered Wood Flooring from the People's Republic of China: Initial Comments on Surrogate Values," dated August 23, 2019 (Petitioner SV Submission) at Exhibit 10a.).

²⁸ See Jinlong's Rebuttal Brief at 1 - 2.

²⁹ *Id.* (citing to *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 38002 (August 5, 2019) (2016-2017 *Final Results*); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015-2016*, 83 FR 35461 (July 26, 2018) (2015-2016 *Final Results*); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Partial Rescission of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 25766 (June 5, 2017); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*,

- The petitioner’s suggested revisions are not supported by the record. For example, the petitioner assumes that “indirect production expenses” are OH expenses but indirect labor or energy expenses could reasonably be related to production as well.
- Therefore, Commerce’s allocation of only part of this “indirect production expenses” line item to OH is more logical and reasonable based on the other line items and notes.

Commerce’s Position: For the preliminary results, we relied upon Jinlong’s calculation of its financial ratios using Sigstrat’s financial statement data. For the final results, we determine that certain aspects of both the petitioner’s and Jinlong’s calculation methodologies may be distortive. Under Jinlong’s calculation, as noted by the petitioner, the MLE denominator (MLE + OH) is overstated, *i.e.*, COGS after change in fixed goods inventory equals approximately RON 34 million, while the notes to the financial statements show COGS of only RON 30 million. However, the petitioner’s methodology may also be distortive, as we do not know the components of the OH figure which may include indirect labor expenses, thus potentially overstating OH.

However, we agree with the petitioner that the ratio calculations should incorporate certain additional information from the notes to the financial statement with respect to COGS. Accordingly, for the final results, we adjusted the COGS for the change in finished goods and removed the COGS of traded goods to derive the cost of manufacture of manufactured goods. We backed out the items that can be reasonably identified as OH (*e.g.*, depreciation, other materials, third party expenses). We also used the SG&A expenses indicated in the notes by adding the revenue and costs from note 4 of the financial statement (these are the bolded items) and then demonstrated how the figures from the notes agree with the total revenues, expenses, and profit from the income statement. We note also that the SG&A ratio denominator is the COGS and the profit denominator is the COGS plus the SG&A expenses. Under this methodology we arrive at ratios of 12.68 percent for OH, 19.53 percent for SG&A, and 1.29 percent for profit.³⁰

Finally, in reviewing the financial ratio calculations, we noted and have corrected the error of listing the value of depreciation as the value for third-party expenses. As these items are corrected, we do not need the adjustments figure used in the *Preliminary Results*.

Comment 2: Whether to Revise the Surrogate Value for Labor

*Petitioner’s Arguments*³¹

- In the *Preliminary Results*, Commerce valued labor “using data from Chapter 16 of National Institute of Statistics of Romania: Manufacture of wood and products of wood and cork, except furniture; manufacture of articles of straw and planting materials {,}” submitted by Jinlong.³² However, the record makes clear that these data understate labor costs.

81 FR 46899 (July 19, 2016); and *Certain Hardwood Plywood Products 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, 82 FR 53460 (November 16, 2017).

³⁰ See Final SV Memorandum.

³¹ See Petitioner’s Case Brief at 5 - 8.

³² *Id.* at 5 - 6 (citing Memorandum, “Antidumping Duty Administrative Review and New Shipper Review of Multilayered Wood Flooring from the People’s Republic of China; 2017-2018: Surrogate Values for the Preliminary Results,” dated January 31, 2020 (Preliminary SV Memorandum) at 6).

- The data that Jinlong provided represent “{m}onthly average net earnings.”³³ Commerce has recognized that it is not appropriate to use net labor costs because they do not represent the full cost to the producer. In *Threaded Rod from China LTFV*, Commerce stated that “when we value labor, we value the cost of labor incurred by the respondents in the production of subject merchandise, not the net earnings of the laborers employed in the production of subject merchandise.”³⁴
- This is consistent with Commerce’s longstanding preference for relying on International Labor Organization (ILO) Chapter 6A data over Chapter 5B data, because the former “reflects all costs related to labor including wages, benefits, housing, training, etc.”³⁵ As a result, Commerce has previously rejected the use of net earnings data where there are data that better reflect the full labor cost.³⁶
- Commerce should use data on the record that better reflects the full cost of labor, specifically, gross monthly wages for Romania that the petitioner submitted in its SV comments.³⁷ Although these data are not as specific to the subject merchandise as the data submitted by Jinlong, this does not make the petitioner’s data less preferable or demonstrate that Jinlong’s data are the best available information.
 - Commerce has previously selected less specific but contemporaneous labor rate data as the best available information over more-specific but non-contemporaneous data.³⁸ Similar to *Threaded Rod from China 2013-2014*, the petitioner’s data are the best available information because they reflect gross earnings and, therefore, better capture the full cost of labor.³⁹
- Accordingly, for the final results, Commerce should rely on the labor data provided by the petitioner, as these data do not understate costs and better represent the full costs incurred for labor in the production of subject merchandise.
- Alternatively, if Commerce continues to rely on the wage data provided by Jinlong, it should revise the hourly wage calculation. Jinlong used 24 working days per month and eight working hours per day to derive an hourly wage.⁴⁰ However, the petitioner submitted data containing the average annual hours actually worked per worker in 2018 for numerous countries, which show that the average annual hours worked in numerous Organization for Economic Co-operation and Development (OECD) countries totaled 1,734.⁴¹
 - Jinlong calculated 2,304 hours per year (i.e., eight hours per day * 24 days per month * 12 months per year), which is well above the hours reported for any of these

³³ *Id.* at 6 (citing Jinlong’s Letter, “Multilayered Wood Flooring from the People’s Republic of China—Preliminary Surrogate Value Submission,” dated August 23, 2019 (Jinlong SV Submission) at Exhibit SV-5).

³⁴ *Id.* (citing *Alloy and Certain Carbon Steel Threaded Rod from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 8821 (February 18, 2020) (*Threaded Rod from China LTFV*), and accompanying Issues and Decision Memorandum (IDM) at Comment 6).

³⁵ *Id.* (citing *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*)).

³⁶ *Id.* (citing *Threaded Rod from China LTFV*, and accompanying IDM at Comment 6).

³⁷ *Id.* (citing Petitioner SV Submission at Exhibit 5).

³⁸ *Id.* at 6-7 (citing *Certain Steel Threaded Rod from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) (*Threaded Rod from China 2013-2014*), and accompanying IDM at Comment 8).

³⁹ *Id.* at 7.

⁴⁰ *Id.* (citing Jinlong SV Submission at Exhibit SV-5).

⁴¹ *Id.* (citing Petitioner SV Submission at Exhibit 5C).

- countries.⁴² Twenty-four working days per month is greater than the number of days calculated by adding Monday through Friday working days in any given month.
- A more reasonable number of days is 21.7 per month, which does not include government holidays, vacation days, or sick days. An even more modest calculation results in nineteen working days per month. Jinlong’s estimate overstates the total number of working hours in a month, and Commerce should not rely on these data and instead should rely on the data provided by the petitioner (i.e., the average annual hours worked per worker in 2018).

*Jinlong’s Rebuttal*⁴³

- In the *Preliminary Results*, Commerce relied upon a labor rate from Romania’s National Institute of Statistics (INSSE), which was fully contemporaneous with the POR and specific to the wood product industry. The petitioner argues that, because this labor rate represents “monthly average net earnings,” it does not encompass the full cost of labor in Romania.⁴⁴ However, the labor rate suggested by the petitioner is far less encompassing and comparable.
- The petitioner argues that Commerce should instead use data from *Trading Economics: Romania (Trading Economics)* to value labor and provided information from the *Trading Economics* website.⁴⁵ While the INSSE data are official government statistics on the labor earnings in Romania, the *Trading Economics* webpage does not show the ultimate source of its information.
 - The information from *Trading Economics* states that it represents “monthly gross wages,”⁴⁶ which include fewer labor cost items than earnings. Therefore, the *Trading Economics* data are less reflective of the full labor cost than the INSSE data.
 - It is not certain whether “monthly gross wages” can be considered manufacturing wages. The *Trading Economics* webpage includes various labor metrics, and only one mentions manufacturing wages. This renders the webpage inappropriate as a source of data for valuing labor.
 - Even if *Trading Economics* was the source of data for manufacturing labor and wages, the INSSE data are specific to the wood product industry and therefore the best available information.⁴⁷
 - Commerce has relied on INSSE data in numerous investigations and reviews, including in previous segments of this AR.⁴⁸
- With respect to the petitioner’s alternative argument that Commerce should revise its

⁴² *Id.* (citing Jinlong SV Submission at Exhibit SV-5).

⁴³ See Jinlong’s Rebuttal Brief at 2 - 5.

⁴⁴ *Id.* at 2 (citing Petitioner’s Case Brief at 6).

⁴⁵ *Id.* at 3 (citing Petitioner SV Submission at Exhibit 5B).

⁴⁶ *Id.*

⁴⁷ *Id.* (citing *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011) (*Taian*) (finding that “product specificity” must be the primary consideration in determining “best available information,” or the data is otherwise not relevant); *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (CAFC 2014) (*Qingdao*) (allowing Commerce’s SV selections where Commerce treated product-specificity as a “more important factor” than other criteria); and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1320 (CAFC 2010) (affirming the selection of “product-specific data” as the “best available information”)).

⁴⁸ *Id.* at 3 - 4 (citing *2016-2017 Final Results and Fresh Garlic from the People’s Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 24th Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2400 (January 15, 2020)).

Romanian labor rate calculation to use labor hours reported by the OECD, it is not Commerce's practice to use a secondary source of information to derive an hourly labor rate. Commerce should continue its established practice of dividing the monthly wage (based on the INSSE data) by 24 working days a month and eight working hours a day to arrive at an hourly labor rate.

- The petitioner provided the annual labor hours of various OECD countries; these hours therefore are not specific to Romania. Although the OECD information states these are "average annual hours actually worked per worker,"⁴⁹ there is no information about the type of laborers included in this aggregation.
- Because the record lacks adequate information about both the INSSE monthly labor rate parameters and the OECD annual labor hours parameters, it is unclear whether these sources would adequately overlap in coverage and allow the OECD hours to be a reliable conversion. It is also possible that the OECD data include different types of labor (*e.g.*, seasonal, part-time, *etc.*), which can explain why the OECD's annual working hours are so much lower than the value used by Commerce as per its standard practice and renders the OECD's hours imprecise and inaccurate.⁵⁰
- Assuming that the OECD labor data are correct (*i.e.*, 1,734 hours per year per worker), this indicates that a laborer works 18 days per month, which is too low for a normal laborer. Additionally, using labor data from the OECD would include countries that are not on Commerce's list of economically comparable countries.
- Therefore, Commerce should not alter its labor rate calculation for the final results.

*Guyu's Rebuttal*⁵¹

- Commerce has valued labor using data from Chapter 16 of the National Institute of Statistics of Romania (*i.e.*, the INSSE): "Manufacture of wood and products of wood and cork, except furniture; manufacture of articles of straw and planting materials" in the last two ARs⁵² and should continue to do so in this proceeding.
- The petitioner argues that Commerce should use general gross monthly wages for Romania to calculate the surrogate value for labor, but those data are not specific to the flooring industry and the respondents.
- The petitioner cites to a single case in which Commerce chose to use contemporaneous labor rate data over data that are more specific but non-contemporaneous, but this has not been Commerce's preference. Commerce has instead stated that using the data on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in non-market economy (NME) AD duty proceedings because it is consistent with how Commerce values all other factors of production (FOPs) and results in the use of a uniform basis for FOP valuation.⁵³
- Therefore, the petitioners cannot conclude that Commerce views the contemporaneity of a country's general wage data as a better alternative to industry-specific data, and Commerce should reject the petitioner's request to depart from its practice in this AR.

⁴⁹ *Id.* at 4 (citing Petitioner's SV Submission at Exhibit 5C).

⁵⁰ *Id.* at 5 (citing to Petitioner's Case Brief at 7 (comparing the OECD's data of 1,734 hours per year per worker and Commerce's normal estimate of 2,304 hours per year per worker)).

⁵¹ See Guyu's Rebuttal Brief at 2 - 3.

⁵² *Id.* (citing 2016-2017 *Final Results* and 2015-2016 *Final Results*).

⁵³ *Id.* (citing *Labor Methodologies*).

Commerce’s Position: We agree with the respondents. In the *Preliminary Results*, we calculated the hourly labor rate using manufacturing-specific data from Chapter 16 of INSSE.⁵⁴ We found this to be the best available information on the record to use as the SV for labor and calculated a manufacturing-specific labor rate of RON 9.23 per hour.⁵⁵ Our labor rate calculation is appropriate and in accordance with our normal practice and is consistent with our calculation methodology in the previous two reviews of this *Order*.⁵⁶

The petitioner cites *Threaded Rod from China LTFV* in support of its assertion that Commerce relies on the cost of labor incurred by the respondents in the production of subject merchandise, instead of the net earnings of the laborers employed in the production of subject merchandise, when valuing labor. However, in that investigation, there were two competing sets of product-specific labor data from INSSE on the record: the average net earnings data and the average labor cost data.⁵⁷ There, we found that the average hourly labor cost data were preferable because they better reflected “the full spectrum of labor (i.e., fully loaded, direct and indirect) costs expressed within ILO Chapter 6A data.”⁵⁸ In the instant AR, we are given the choice between INSSE average net earnings data specific to the manufacture of wood products and gross monthly wage data published by *Trading Economics*, which are not specific to wood flooring.

In *Labor Methodologies*, Commerce announced a change in our methodology for valuing the cost of labor in NME cases.⁵⁹ Although Commerce stated a preference for ILO data, it did not preclude reliance on data from another source.⁶⁰ The petitioner cites to *Threaded Rod from China 2013-2014*, in which Commerce selected less specific but contemporaneous labor rate data as the best available information over more specific but non-contemporaneous data. However, as Jinlong noted, the Court of International Trade (CIT) affirmed in *Taian* that “‘product specificity’ logically must be the primary consideration in determining “‘best available information.’”⁶¹ The CIT reiterated this position in *Qingdao*, stating that “Commerce generally selects, to the extent practicable, surrogate values that are publicly available, are product-specific, reflect a broad market average, and are contemporaneous with the period of review.”⁶² Therefore, the fact that Commerce selected less specific but contemporaneous labor rate data in *Threaded Rod from China 2013-2014* does not preclude Commerce from selecting the INSSE data as the best available information upon which to rely for calculating the hourly labor rate, which are both specific to the wood flooring industry and contemporaneous to the POR, in the instant AR.

⁵⁴ See Preliminary SV Memorandum at 6.

⁵⁵ *Id.*

⁵⁶ See, e.g., *Multilayered Wood Flooring from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2016-2017*, 83 FR 65630 (December 21, 2018) (*2106-2017 Preliminary Results*), accompanying PDM; see also Memorandum, “Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People’s Republic of China; 2016-2017: Surrogate Values for the Preliminary Determination” at 5, unchanged in *2016-2017 Final Results*.

⁵⁷ See *Threaded Rod from China LTFV*, and accompanying IDM at Comment at 6.

⁵⁸ *Id.*

⁵⁹ See *Labor Methodologies*.

⁶⁰ *Id.*

⁶¹ See *Taian*, 783 F. Supp. 2d 1330.

⁶² See *Qingdao*, 766 F.3d 1386.

Additionally, in *Labor Methodologies*, Commerce explained that “{w}here data is not available on a per-hour basis, {Commerce} converts that data to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week and 24 working days per month.”⁶³ Accordingly, in the *Preliminary Results*, we divided the monthly manufacturing labor rate in Romania by 24 days and eight hours per day, in accordance with our practice.⁶⁴ To use the OECD data suggested by the petitioner would employ a methodology that is not specific to Romania and that utilizes secondary sources that are unrelated to the source used to value labor. Furthermore, the petitioner has not demonstrated that the labor rate reported by *Trading Economics* does not account for vacation days, sick days, or holidays, or that workers are not paid for such days.

Therefore, we continue to find the INSSE data to be the best available information on the record to use as the surrogate value for industry-specific labor rates, in accordance with our normal practice. Accordingly, we are not making any changes to our labor rate calculation for the final results.

Comment 3: Whether to Revise the Surrogate Value for Inland Freight

*Petitioner’s Arguments*⁶⁵

- In the *Preliminary Results*, Commerce relied on data from the World Bank’s *Doing Business 2019: Romania* to calculate the SV for truck freight.⁶⁶ Commerce explained that using these data resulted in an inland freight cost of 0.000071 USD per KG per kilometer (KM).⁶⁷
- However, numerous SVs and FOPs are reported in M³, and it is incorrect to apply a cost per KG to a FOP quantity or SV reported in M³ to determine the cost of freight. Commerce should therefore convert truck freight to a cost per M³ to calculate the freight expense for FOPs reported in M³.
- Commerce should use the conversion rates (from KG to M³) provided in the Petitioner’s Case Brief,⁶⁸ as these rates will ensure that a proper truck freight amount is calculated.

*Jinlong’s Rebuttal*⁶⁹

- Petitioner proposes using Global Trade Atlas (GTA) HTS data for most inputs. However, the wood density information provided by Guyu is a more specific and reliable conversion for the inputs in question. Guyu and Jinlong both produce the same subject merchandise and use a majority of the same inputs.
 - The density of woods reported by Guyu are actual densities, rather than implied densities calculated from import data, and are most reflective of the purchasing and production experience of Jinlong.
 - Accordingly, Commerce should rely on the actual species-specific densities reported

⁶³ See *Labor Methodologies* at 36094, footnote 11.

⁶⁴ See, e.g., *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 11953 (February 28, 2020), and accompanying IDM at Comment 9.

⁶⁵ See Petitioner’s Case Brief at 8 - 9.

⁶⁶ *Id.* at 8 (citing Preliminary SV Memorandum at 6).

⁶⁷ *Id.*

⁶⁸ *Id.* at 9 (citing Guyu’s July 10, 2019, Section D Questionnaire Response at Exhibit D-1-2 (Guyu’s July 10, 2019, DQR)).

⁶⁹ See Jinlong’s Rebuttal Brief at 5 - 6.

by Guyu for converting the freight rate to M³ as applied to Jinlong's wood input purchases, rather than the more general hypothetical densities derived from the GTA data.

Commerce's Position: We agree with the petitioner, in part. Commerce should not apply a cost per KG surrogate inland freight rate to a FOP quantity or SV reported in M³. However, we do not find that it is more reasonable to calculate a surrogate inland freight rate on a cost per M³ basis for those FOPs or SVs, as suggested by the petitioner, which would result in two rates (*i.e.*, one on a per KG basis and another on a M³ basis). Instead, because Commerce relied on the data in World Bank's *Doing Business 2019: Romania*, which is compiled on a per KG basis,⁷⁰ for the final results, we converted all FOP quantities or SVs reported in M³ to KG.

Regarding the conversions for FOP quantities or SVs reported in M³ to KG, we agree with Jinlong that it is more reasonable to use Guyu's reported unit conversions⁷¹ for Jinlong's inputs because the wood density information provided by Guyu is more species-specific than the GTA HTS data in the Jinlong Preliminary Calculation Memorandum.⁷² Therefore, for the final results, we used the unit conversions provided by Guyu to convert all FOP quantities or SVs reported in M³ to KG for both respondents to calculate the surrogate inland freight rate.⁷³

Comment 4: Whether to Revise the Surrogate Value for Glue

*Petitioner's Arguments*⁷⁴

- In the *Preliminary Results*, Commerce relied on import data for Romania's Harmonized Schedule (HS) number 3506.91.10 to value glue for Jinlong and Guyu.⁷⁵ However, this is not the appropriate HS category to value the glue used by Jinlong and Guyu in the production of subject merchandise.
- HS number 3506.91.10 covers "adhesives based on polymers of headings 3901 to 3913 or on rubber: Optically clear free-film adhesives and optically clear curable liquid adhesives of a kind used solely or principally for the manufacture of flat panel displays or touch-sensitive screen panels."⁷⁶ There is no basis to believe that the glue used in Jinlong's and Guyu's production of subject merchandise is of the kind "used solely or principally for the manufacture of flat panel displays or touch-sensitive screen panels."
- It is much more reasonable to conclude that the glue used in the manufacture of subject merchandise falls under HS number 3506.91.90, "Adhesives based on polymers of headings 3901 to 3913 or on rubber: Other."⁷⁷ Commerce should rely on HS number 3506.91.90, or as an alternative 3506.91, to value glue for Jinlong and Guyu in the final results.

⁷⁰ See Preliminary SV Memorandum at 6.

⁷¹ See Guyu's July 10, 2019, DQR at Exhibit D-1-2.

⁷² See Petitioner's Case Brief at Exhibit 2. The petitioner refers to the Preliminary SV Memorandum at Attachment VI (sheet "Calculated_SV_Data"); however, this attachment is part of Memorandum, "Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2017-2018: Preliminary Results Margin Calculation for the Fusong Jinlong Group," dated January 31, 2020 (Jinlong Preliminary Calculation Memorandum).

⁷³ See Jinlong Final Calculation Memorandum. See also Guyu Final Calculation Memorandum.

⁷⁴ See Petitioner's Case Brief at 9 - 10.

⁷⁵ *Id.* at 9 (citing Preliminary SV Memorandum at 4).

⁷⁶ *Id.* (citing Petitioner SV Submission at Exhibit 3).

⁷⁷ *Id.*

Commerce’s Position: We disagree with the petitioner. The petitioner does not cite record evidence, such as information about the glue used by Jinlong or Guyu or industry standards with respect to this input, to support its contention that HS number 3506.91.10 does not represent a reasonable SV for glue for both respondents. Jinlong reported HS number 3506.91 but did not describe the glue it used in the production of the subject merchandise,⁷⁸ while Guyu reported the more specific HS number 3506.91.10, corresponding with its description of the glue it used. We preliminarily determined to use the more specific HS number for both companies based on the production processes reported by Guyu and Jinlong. Therefore, for the final results, we continue to use HS number 3506.91.10 to value glue for Jinlong and Guyu.

Guyu Issues

Comment 5: Whether to Continue to Assign a Separate Rate to Guyu

*Petitioners’ Arguments*⁷⁹

- When conducting an AD proceeding that involves an NME country (e.g., China), Commerce “applies a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence.”⁸⁰ A company that wishes to receive a separate rate must demonstrate both *de jure* and *de facto* independence from the Chinese government.⁸¹ Commerce’s test is flexible and based on the totality of the circumstances.⁸²
- In the *Preliminary Results*, Commerce found that Guyu demonstrated its independence from the Chinese government. However, the record shows that Guyu has failed to do so.
- Guyu reported that neither Guyu nor its parent company, Company A,⁸³ are “owned or controlled by any provincial or local government” and that neither company has “relevant relationships with the national, provincial, and local government, including ministries or offices of those managements.”⁸⁴ The petitioner submitted publicly available information that contradicts what Guyu reported, including information about a key individual who may have a relationship with the Chinese government.⁸⁵
 - Guyu later reported that this key individual is an elected “member/representative” of a local congress⁸⁶ whose name is used on the websites of certain affiliated companies for promotional purposes due to this person’s recognition and reputation in the wood

⁷⁸ See Jinlong Preliminary Calculation Memorandum.

⁷⁹ See Petitioner’s Case Brief at 16 - 22.

⁸⁰ *Id.* at 16 - 17 (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 23756 (April 29, 2020) (*Fillets from Vietnam*), and accompanying IDM at Comment 6).

⁸¹ *Id.* at 17.

⁸² *Id.*

⁸³ This company’s identity is subject to the administrative protective order (APO) of this AR.

⁸⁴ See Petitioner’s Case Brief at 18 (citing Guyu’s June 19, 2019 Section A Questionnaire Response at A-3).

⁸⁵ *Id.* at 18 - 19 (citing Petitioner’s Letters, “Multilayered Wood Flooring from the People’s Republic of China: Factual Information on Jiangsu Guyu’s Section A Response,” dated July 3, 2019; see also Petitioner’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: Petitioner’s Comments on Jiangsu Guyu’s Section A Response,” dated July 10, 2019).

⁸⁶ *Id.* at 19 (citing Guyu’s August 13, 2020 Section A Supplemental Questionnaire Response at 5).

flooring industry.⁸⁷ Guyu also stated that this individual does not hold any shares in Company A and is not involved in the operations of Company A.⁸⁸

- Additionally, for any individuals associated with Guyu, the company refused to provide a three-year history of their positions or relationships with the Chinese government, as requested by Commerce which would include the key individual, claiming that the question was “not applicable” to these individuals.
- Given that there is public knowledge that this individual, a member or representative of a local congress, has a high position in a company associated with Guyu, Commerce should be skeptical of Guyu’s claims. Nevertheless, if Commerce accepts Guyu’s claims regarding this individual, the information on the record still indicates that Guyu has not demonstrated independence from the Chinese government.
- Therefore, it is reasonable for Commerce to conclude that this key individual has the ability to control companies associated with Guyu and, thus, Guyu itself, which is consistent with the statutory definition of affiliation as defined by section 771(33) of the Act, as amended (the Act).
- In *Galvanized Steel Wire from China*, Commerce found that the mandatory respondent, Huayuan, was not eligible for a separate rate, relying on the fact that (1) a key individual within Huayuan had the potential to control pricing and export of the merchandise under consideration, and (2) there was a document on the record that showed that this key individual also played a role in the local government entity while simultaneously involved in the export and pricing of Huayuan’s exports to the United States.⁸⁹ In that case, Commerce determined that the Chinese government includes local legislatures.⁹⁰
- Commerce does not require that the Chinese government have actual control but can find a lack of independence where the government is “able to exercise, or have the potential to exercise, control of a company’s general operations.”⁹¹ In this AR, the key individual affiliated with Guyu has, at the very least, the potential to control companies affiliated with Guyu. Because this individual is involved with the Chinese government, this means that the government has the potential to control companies affiliated with Guyu and, consequently, Guyu itself.
- As a result, Commerce should determine that Guyu does not qualify for a separate rate and is part of the China-wide entity for the final results.

*Guyu’s Rebuttal*⁹²

- In the *Preliminary Results*, Commerce correctly followed its recent practice and continued

⁸⁷ *Id.* at 20 (citing Guyu’s March 20, 2020 Fourth Supplemental Questionnaire Response (Guyu’s March 20, 2020SQR) at 1-2).

⁸⁸ *Id.*

⁸⁹ *Id.* at 21 (citing *Galvanized Steel Wire from the People’s Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 73589 (November 29, 2011) (*Galvanized Steel Wire from China*), and accompanying PDM at 4). See also *Galvanized Steel Wire from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012), and accompanying IDM at Comment 5.

⁹⁰ *Id.* (citing *Galvanized Steel Wire from China*, and accompanying IDM at Comment 5, and *Fillets from Vietnam*, and accompanying IDM at Comment 33 (determining that the Vietnamese government was directly involved in the oversight of the respondent IDI’s business through its representation, via Mr. X, who was on the board of IDI and its parent company, Company Y, because Mr. X held a position with a local provincial government during the POR)).

⁹¹ *Id.* at 22 (citing *Fillets from Vietnam*, and accompanying IDM at Comment 33).

⁹² See Guyu’s Rebuttal Brief at 3 - 7.

to find Guyu eligible for a separate rate. The petitioner argues that Guyu should not qualify for a separate rate because of family relationships between the shareholders of Guyu and certain affiliated producers, specifically that a key individual's membership in a local congress demonstrates Chinese government control over Guyu. However, the petitioner's arguments do not support the argument that Commerce erred in its *Preliminary Results* when it found Guyu eligible for a separate rate.

- Since the 2012-2013 AR of this *Order*, Commerce has found Guyu to be eligible for a separate rate.⁹³ In doing so, Commerce has found that Guyu continues to demonstrate an “absence of *de jure* and *de facto* government control,” and nothing has changed to cause Commerce to deviate from its previous determinations.
- Guyu has fully cooperated with Commerce's request for information, demonstrating that it has the autonomy to set prices, negotiate and sign agreements, select management, and decide how to dispose of profits and finance losses. The petitioner alleges that a key individual, who is a member in a local congress, has the potential to exert control and influence over the company. However, there is no evidence that this individual controls certain producers that are affiliated with Guyu based on a family relationship, and there is even less evidence that the Chinese government in any way controls Guyu.
- Further, the Chinese government does not consider a national, provincial, or local congress to be a governmental agency. This has been repeatedly clarified by the Chinese government in previous countervailing duty (CVD) cases.⁹⁴
- Finally, Commerce's recent decisions do not agree with the petitioner's allegation that a company whose shareholder is a member of a local congress should be denied a separate rate.
 - In *Graphite Electrodes from China*, Wei Fang, the president and chairman of the respondent Liaoning Fangda, was a 12th National People's Congress representative. Commerce found that Mr. Fang's membership in the congress was not a sufficient indication of *de facto* or *de jure* control of the Chinese government over the Fangda Group, which includes Liaoning Fangda.⁹⁵
 - Specifically, Commerce stated that “a *de facto* finding of control based on the fact that these powers reside in individuals who also control companies is untenable, because there is insufficient evidence of how these powers were employed to control the owners (or board members or senior managers) through their legislative office.”⁹⁶
 - In *Silicon Photovoltaic Products from China*, the chairman and chief executive officer of the respondent China Solar was also a member of the National People's Congress.⁹⁷ Commerce concluded that there was no “specific evidence that, in

⁹³ *Id.* at 3 - 4 (citing *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review*; 2012-2013, 80 FR 41476 (July 15, 2015), and 2015-2016 *Final Results*).

⁹⁴ *Id.* at 5 (citing Guyu's March 20, 2020 SQR).

⁹⁵ *Id.* (citing to *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 62474 (September 9, 2016) (*Graphite Electrodes from China*), and accompanying IDM at Comment 13 at 15-16).

⁹⁶ *Id.*

⁹⁷ *Id.* at 6 (citing to *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Silicon Photovoltaic Products from China*), and accompanying IDM at 44-45).

influencing the companies' operations pursuant to their duties as company officials {that} these persons were directing the companies' export pricing decisions based on the will of the {Chinese} government.”⁹⁸

- o Commerce made a similar determination in *Silicon Photovoltaic Cells from China*.⁹⁹
- As in those investigations and ARs, the petitioner in this AR has not provided any real evidence that the People's Congress of Siyang City has *de jure* control over Guyu or that the People's Congress of Siyang City has *de facto* control over Guyu through the membership of this key individual.
- Accordingly, Commerce should reject the petitioner's argument and continue to find Guyu eligible for a separate rate in the final results.

Commerce's Position: Commerce considers China to be an NME country under section 771(18) of the Act. In AD proceedings involving NME countries, such as China, Commerce has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence.¹⁰⁰ However, if an exporter can demonstrate an absence of government control, both *de jure* and *de facto*, with respect to exports, then it is eligible for a rate separate from the NME entity. In our *Preliminary Results*, we explained our practice with respect to determining if there is an absence of *de facto* government control.¹⁰¹ Specifically, to determine whether there is an absence of *de facto* government control of an enterprise's export functions, we examine whether: (1) the export prices are set by, or are subject to the approval of, a government agency; (2) the respondent has authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.¹⁰²

Here, we are faced with arguments concerning whether an individual's membership in a local congress, who is also the owner of a company affiliated with Guyu via Company A, amounts to potential *de facto* government control of Guyu. However, there is no record evidence (*e.g.*, business licenses, appointment letters, *etc.*) indicating that the key individual holds a position or shares in Company A or Guyu. There is also no record evidence that any powers this key individual might have received as member of the local congress can be employed resulting in potential *de facto* government control over Company A and/or Guyu. Therefore, based on the totality of the circumstances, we find that there is an absence of government control over Guyu because Guyu has demonstrated that (1) it sets its own export prices independent of the government and without the approval of a government authority; (2) it has authority to negotiate and sign

⁹⁸ *Id.*

⁹⁹ *Id.* (citing to *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) (*Silicon Photovoltaic Cells from China*), accompanying IDM at 35 (noting that “the record does not show that the membership or position of senior managers or board directors of certain {separate rate applications} in these organizations resulted in a lack of autonomy on the part of the respondent to set prices, negotiate and sign agreements, select management, or decide how to dispose of profits or financing of losses”)).

¹⁰⁰ See, *e.g.*, *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-6 (CAFC 1997).

¹⁰¹ See *Preliminary Results*, and accompanying PDM at 11-14. The petitioner has not made arguments with respect to the absence of *de jure* government control.

¹⁰² *Id.* at 13.

contracts and other agreements; (3) it has autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on Guyu's use of export revenue. Due to the business proprietary nature of information relating to this analysis, a more detailed discussion of this matter can be found in Guyu's Separate Rate Memorandum.¹⁰³

Comment 6: Whether to Revise the Surrogate Value for Thinner

*Petitioner's Arguments*¹⁰⁴

- In the *Preliminary Results*, Commerce relied on import data related to Romania's HS number 3824.99.15 to value reactive thinner for Guyu.¹⁰⁵ The HS heading 3824 covers "Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products); not elsewhere specified or included{.}" This is not the proper HS category for thinner.
- Instead, Commerce should use HS number 3814, which covers "Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers." Commerce also relied on this HS number to value thinner for the other respondent, Jinlong in the *Preliminary Results*.¹⁰⁶

Commerce's Position: We disagree with the petitioner that HS category 3814 is more appropriate to use as an SV for Guyu's reactive thinner than is HS number 3824.99.15. In the *Preliminary Results*, we used Romanian HS numbers to value the inputs of the mandatory respondents, and we do not find the petitioner's argument persuasive that Guyu's reported HS number 3824.99.15 is unreasonable, particularly given that Guyu is most familiar with the inputs it uses in the production of its subject merchandise.¹⁰⁷ The Romanian import data included subheadings for both "thinner" and "reactive thinner," the latter of which was reported by Guyu. Although Guyu provided a description of its reactive thinner input,¹⁰⁸ Jinlong simply described this input as "thinner."¹⁰⁹ Despite the petitioner's argument that Commerce should rely on Jinlong's HS number to value thinner for Guyu, we find it reasonable to rely on different HS numbers for Jinlong and Guyu because each respondent described this input differently. Therefore, we have not changed the SV for Guyu's reactive thinner for the final results.

Comment 7: Whether to Revise the Surrogate Value for Aluminum Paste

*Petitioner's Arguments*¹¹⁰

- In the *Preliminary Results*, Commerce relied on import data for Romania's HS number 7603.10.00 to value aluminum paste for Guyu.¹¹¹ This is not the appropriate HS category to

¹⁰³ See Memorandum, "Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2017-2018: Final Separate Rate Determination for Jiangsu Guyu International Trading Co., Ltd.," dated concurrently with this memorandum (Guyu's Separate Rate Memorandum).

¹⁰⁴ See Petitioner's Case Brief at 10.

¹⁰⁵ *Id.* (citing Preliminary SV Memorandum at 4).

¹⁰⁶ *Id.* (citing Preliminary SV Memorandum at 3).

¹⁰⁷ See Preliminary SV Memorandum at 3 - 4.

¹⁰⁸ See Guyu's July 10, 2019, DQR at Exhibit D-1-1.

¹⁰⁹ See Jinlong SV Submission at Exhibit SV-2 (sheet "FOP & USP").

¹¹⁰ See Petitioner's Case Brief at 10 - 11.

¹¹¹ *Id.* (citing Preliminary SV Memorandum at 4).

value this input used by Guyu in the production of subject merchandise.

- HS 7603.10.00 covers “Powders of Aluminium, of Non-Lamellar Structure ({Excluding} Pellets of Aluminium).” Guyu described the input as a “paste,” and this HS number covers “powder.”
- For the final results, Commerce should rely on HS number 3212.90, which covers “Pigments (including metallic powders and flakes) dispersed in nonaqueous media, in liquid or paste form, of a kind used in the manufacture of paints (including enamels); stamping foils; dyes and other colouring matter put up in forms or packings for retail sale: Other,”¹¹² to value aluminum paste for Guyu.

Commerce’s Position: Based on Guyu’s description of the aluminum paste it used to produce the subject merchandise, we disagree with the petitioners that HS number 3212.90 is more appropriate than HS number 7603.10.00 to value this input. Because Guyu’s description of its aluminum paste input involves business proprietary information, our analysis of the issue is contained in the Guyu Final Calculation Memorandum.¹¹³

Non-Selected Company Issues

Comment 8: Whether Commerce Should Have Selected Senmao as a Voluntary Respondent

*Senmao’s Arguments*¹¹⁴

- Senmao requested treatment as a voluntary respondent pursuant to section 782(a) of the Act, 19 CFR 351.204(d), and 19 CFR 351.213(f).¹¹⁵ In its request, Senmao stated that erroneous U.S. Customs and Border Protection (CBP) entry data skewed Commerce’s selection of mandatory respondents in this AR.
- Along with Senmao, the petitioner and another non-selected respondent also filed comments questioning the integrity of the CBP entry data and requested that Commerce issue quantity and value (Q&V) questionnaires. Senmao reiterated these problems and its objections to Commerce’s reliance on the CBP data to select mandatory respondents in two letters. Commerce declined to issue Q&V questionnaires.
- Senmao therefore submitted responses to sections A, C, and D of Commerce’s AD questionnaire and requested voluntary respondent treatment.¹¹⁶ Commerce rejected Senmao’s request to be treated as voluntary respondent, stating that selecting an additional company for individual examination would be unduly burdensome and inhibit the timely completion of the AR.¹¹⁷ This erroneous decision led Commerce to ignore the questionnaire responses of one of the largest exporters to the United States during the POR.

¹¹² *Id.* (citing Petitioner SV Submission at Exhibit 3).

¹¹³ See Guyu Final Analysis Memorandum.

¹¹⁴ See Senmao’s Case Brief.

¹¹⁵ *Id.* at 1 (citing Senmao’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: Request for Voluntary Respondent Treatment,” dated June 12, 2019).

¹¹⁶ *Id.* at 1 - 2 (citing Senmao’s June 12, 2019 Section A Questionnaire Response and June 28, 2019 Sections C and D Questionnaire Response).

¹¹⁷ *Id.* at 2 (citing Memorandum, “Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People’s Republic of China: Whether to Select Voluntary Respondent,” dated September 26, 2019 (Voluntary Respondent Memorandum)).

- The section A responses submitted by Jinlong and Guyu indicate that the CBP data were incorrect and that Senmao accounted for a larger volume of subject merchandise imports than either of the two mandatory respondents. However, Commerce continued to reject Senmao’s request to be treated as a voluntary respondent three months later without addressing the issue.
- It was not reasonable for Commerce to conclude that selecting Senmao as a voluntary respondent would be unduly burdensome and inhibit the timely completion of the AR. Senmao has previously been a mandatory respondent in this proceeding, including in the previous AR, and Commerce is familiar enough with its operations that it would not have been difficult to review Senmao again.¹¹⁸ Therefore, Commerce’s decision to exclude Senmao from individual examination was unreasonable.

*Petitioner’s Rebuttal*¹¹⁹

- Senmao’s argument ignores the Act and Commerce’s determination and thus should be rejected. Commerce followed its statutory instructions in both selecting the mandatory respondents and choosing not to select Senmao as a voluntary respondent, and Senmao has identified no error with these decisions.
- Section 777A of the Act directs Commerce to calculate individual dumping margins for each known exporter and producer unless it is not practicable to do so given the large number of exporters/producers under review.¹²⁰ In such a circumstance, Commerce may select a “reasonable number” of companies to review by limiting the examination to a sample of companies or the exporters/producers accounting for the largest volume of subject merchandise that can reasonably be examined.¹²¹
- Section 782 of the Act states that, where information is timely submitted by a company not selected for individual examination, Commerce may calculate an individual margin for such a company if the number of exporters/producers subject to the review “is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the {Department} and inhibit the timely completion of” the review.¹²²
- The Act provides further guidance, explaining that, in examining whether accepting a voluntary respondent would be unduly burdensome, Commerce may consider the complexity of the issues in the proceeding, prior experience in the proceeding, the total number of investigations and reviews being conducted, and other appropriate factors regarding the timely completion of the proceeding.¹²³

Commerce’s Position: We disagree with Senmao. In addressing the comments submitted by Senmao and other interested parties on the CBP data used to select mandatory respondents, we noted in the Respondent Selection Memorandum that, “there is no record evidence that the CBP

¹¹⁸ *Id.* at 3 (citing 2016-2017 Final Results).

¹¹⁹ See Petitioner’s Rebuttal Brief at 2 - 4.

¹²⁰ *Id.* at 2 (citing section 777A(c)(1) of the Act).

¹²¹ *Id.* (citing section 777A(c)(2) of the Act).

¹²² *Id.* (citing section 782(a) of the Act).

¹²³ *Id.* at 2 - 3 (citing 782(a)(2)).

data contain unusual entry quantities such that the entire CBP dataset is called into question.”¹²⁴ With respect to Senmao’s request that Commerce issue Q&V questionnaires, we also noted in the Respondent Selection Memorandum that, with nearly 100 exporters in this AR, it would not be practicable to issue Q&V questionnaires to each company.¹²⁵ Senmao does not contest the complexity involved in such a task.

Section 782(a)(1) of the Act provides that Commerce shall establish an individual weighted average dumping margin for a company not selected for individual examination when information requested from individually examined exporters is timely submitted by the company not selected for individual examination and if the number of exporters/producers subject to the review “is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to {Commerce} and inhibit the timely completion of” the review. The Act provides that, in determining whether examination would be unduly burdensome, Commerce may consider the complexity of issues or information presented in the proceeding, including questionnaires and responses, prior experience in the same or similar proceeding, the total number of investigations and reviews being conducted by Commerce as of the date of the determination, and other factors Commerce considers appropriate related to the timely completion of the review.¹²⁶

As we noted in the Voluntary Respondent Memorandum, the issues presented in this review are complex, and the information submitted by the mandatory respondents and other interested parties has been exceedingly voluminous. For example, Commerce received 56 applications and certifications from companies seeking to qualify for separate rates, as well as no shipment certifications from 26 companies. As anticipated, throughout this review, we expended considerable resources in reviewing each of these submissions and in many cases, issuing supplemental questionnaires.¹²⁷ Further, both Jinlong and Guyu submitted thousands of pages of documentation in response to Commerce’s questionnaires, all of which had to be analyzed and acted upon within the statutory deadlines set forth in the Act. In addition, while Commerce has conducted several reviews in this proceeding, this was the first time that Jinlong and Guyu were investigated as mandatory respondents and thus, we had to expend additional resources to analyze the corporate structures, record-keeping, business practices, and production processes of these companies as well as their affiliates. This was especially complex because Jinlong is a collapsed entity consisting of four exporters/producers and Guyu exports subject merchandise produced by its parent company, and, thus, submitted information for both itself and its parent company. In the process, we issued and reviewed multiple supplemental questionnaires to the mandatory and non-selected respondents.

As we also noted in the Respondent Selection Memorandum, the office to which this AR was assigned was at the time conducting (and continues to conduct) numerous concurrent AD and CVD proceedings with overlapping statutory deadlines and, moreover, because of the significant workload throughout Enforcement and Compliance, the assigned office did not then anticipate

¹²⁴ See Memorandum, “Antidumping Administrative Review of Multilayered Wood Flooring from the People’s Republic of China: Respondent Selection,” dated May 21, 2019 (Respondent Selection Memorandum).

¹²⁵ *Id.*

¹²⁶ See section 782(a)(2)(A)-(D) of the Act.

¹²⁷ See *Preliminary Results*, and accompanying PDM at 2.

receiving additional resources to devote to this AR.¹²⁸ Accepting Senmao as a voluntary respondent would have required additional resources not currently at Enforcement and Compliance's disposal in order to review and analyze its questionnaire responses, issue potential multiple additional supplemental questionnaires, and potentially conduct verification of those questionnaire responses. Further, a full examination of Senmao would have required the preparation of an additional margin program specific to Senmao, as well as analysis/calculation memoranda and possible verification reports. For these reasons, we found (and continue to find) that this case already required the devotion of significant resources, and thus, it would be unduly burdensome and inhibit the timely completion of the review to examine a voluntary respondent.

Comment 9: Whether to Rescind Baroque from the Administrative Review

*Baroque's Arguments*¹²⁹

- Commerce excluded from the *Order* wood flooring that is produced and exported by the Samling Group, which includes Baroque.¹³⁰ In this AR, Commerce initiated a review only on entries where Baroque was the exporter but not the producer of subject merchandise.
- Baroque stated in its June 24, 2019, no shipment certification that the Samling Group did not have exports or sales of the subject merchandise during the POR that were produced by any company that is not part of the collapsed Samling Group.
- Therefore, Baroque requests that Commerce rescind this AR with respect to Baroque.

Commerce's Position: Baroque is correct that Commerce may rescind an AR in its entirety or only with respect to a particular exporter or producer if Commerce concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise pursuant to 19 CFR 351.213(d)(3). However, pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an AR under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On December 31, 2018, the petitioner requested a review of Baroque¹³¹ and did not withdraw the request. Accordingly, we are not rescinding the review as to Baroque and, instead, are making a determination of no shipments with respect to Baroque for the final results, consistent with our practice in AD proceedings for companies where Commerce is able to confirm their no shipment claims.¹³²

Comment 10: Whether Certain Companies Filed Proper No Shipment Certifications

*Biyork et al.'s Arguments*¹³³

¹²⁸ See Respondent Selection Memorandum at 3.

¹²⁹ See Baroque's Letter.

¹³⁰ *Id.* (citing *Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Antidumping Duty Investigation*, 79 FR 25109 (May 2, 2014)).

¹³¹ See Petitioner's Letter, "Multilayered Wood Flooring from the People's Republic of China: Request for Administrative Review," dated December 31, 2018 at Appendix A.

¹³² See, e.g., *2016-2017 Preliminary Results* and accompanying PDM, unchanged in *2016-2017 Final Results*, and accompanying IDM at Comment 9.

¹³³ See *Biyork et al.*'s July 8, 2020, Case Brief.

- Biyork *et al.* filed timely no shipment certifications but were placed in the China-wide category for the *Preliminary Results* because, in a subsequent CBP release memorandum, Commerce identified U.S. entry documentation related to Biyork *et al.* and noted that more information regarding their no shipment certifications was requested. However, Commerce improperly treated this information as “confidential information of Customs and Border Protection.”¹³⁴ Accordingly, while counsel was provided notice of potential defects in Biyork *et al.*’s no shipment certifications, it was precluded from disclosing this information to the companies, depriving them from having an opportunity to comment on it. Biyork *et al.* was first notified of this discrepancy in the *Preliminary Results*.
 - In a letter to Commerce, counsel expressed this concern, noted that Commerce’s claim of confidentiality was overly broad, and requested that the names be made publicly available.¹³⁵ Counsel’s Letter also included a discussion as to why a no shipment certification would still be valid even if entries were made during the POR by unrelated importers. Commerce did not respond to Counsel’s Letter, including in the *Preliminary Results*.
 - As Commerce did not address any of the substance of Counsel’s Letter, Commerce’s reasoning is unavailable for review and comment. Without such reasoning, parties are precluded from effectively participating in the process.¹³⁶
 - Commerce should therefore find that Biyork *et al.* either properly filed no shipment certifications or that they qualify for a separate rate.
- Section 782(d) of the Act requires that Commerce provide parties a reasonable opportunity to comment. Because counsel was forbidden from providing Biyork *et al.* notice, allowing the respondents to gather responsive information, any notice is rendered defective.¹³⁷
- Commerce has sufficient facts of record to find that “at least some, if not all, of the submitted ‘no shipment’ certifications were, in fact, correct.”¹³⁸ For example, CBP information placed on record has a number of critical data points which can be used to support such certifications. The documents show not only the entry dates, but also the date of arrival of the merchandise in question. This argument was raised in Counsel’s Letter.
 - To the extent that the existence of certain “entries” contradicted the no shipment certifications, the parties should have been provided with sufficient detail to identify the transaction and also provided an opportunity to explain why the transaction was not a reportable sale during the POR.¹³⁹ For example, Commerce has found that certain two-layer hardwood flooring is not subject to the scope of the order, as it is not multi-layered.
 - Such flooring would have properly been entered under the same HTS provision, but not as a type 03 entry subject to AD/CVD duties. As these exporters were not the importers, it is possible that the importer simply filed an inaccurate entry stating that these goods were within scope. Accordingly, as it is now too late to provide such

¹³⁴ *Id.* at 4.

¹³⁵ *Id.* (citing Letter on behalf of certain parties whose identities are subject to the APO in this AR, “Multilayered Wood Flooring from the People’s Republic of China (“MLF”); A-570-970; Comments on CBP Information on No Shipments,” dated October 2, 2019 (Counsel’s Letter)).

¹³⁶ *Id.* at 6 (citing *SKF USA INC. v. United States*, 391 F. Supp. 2d 1327 (CIT 2005) (*SKF USA*)).

¹³⁷ *Id.* at 3 - 4 (citing *Sigma Corp. v. United States*, 841 F.Supp. 1255 (CIT 1993), *Wieland Werke, AG v. United States*, 4 F. Supp. 2d 1207 (CIT 1998), and *SKF USA*).

¹³⁸ *Id.* at 7.

¹³⁹ *Id.* at 9.

opportunity, and as this failure is the result of impermissible actions of Commerce, Commerce should continue the deposit rate from the previous review.¹⁴⁰

*Petitioner's Rebuttal*¹⁴¹

- Biyork *et al.*'s argument ignores the record as a whole, specifically, that Commerce publicly identified Biyork *et al.* and that they were thus on notice and had an opportunity to seek to correct their no shipment certifications.¹⁴²
- Biyork *et al.*'s assertion that there is sufficient information on the record to determine that the no shipment certifications were correct for at least some of the companies should be rejected for reasons which are subject to the APO in this AR.¹⁴³

Commerce's Position: We disagree with Biyork *et al.* As an initial matter, Commerce released information from CBP contradicting the no shipment certifications of Biyork *et al.* (and other non-selected respondents) on June 25, 2019, and September 26, 2019, and requested comments on the information by July 2, 2019, and October 3, 2019, respectively.¹⁴⁴ Counsel's Letter was submitted on October 2, 2019, and thus, was responsive only to the September 26, 2019, CBP information pertaining to only some of the Biyork *et al.* companies.

Notwithstanding, contrary to Biyork *et al.*'s argument that Commerce was non-responsive to Counsel's Letter, Commerce did "respond" to Counsel's Letter by publicly identifying certain companies, along with the remaining Biyork *et al.* companies, as requested by Biyork *et al.* in an October 18, 2019, No Shipment Memorandum.¹⁴⁵ Having publicly identified all relevant companies and allowing counsel to put Biyork *et al.* on notice, Commerce provided additional time for parties to comment on the entry documentation, which, as noted by the petitioner, Biyork *et al.* did not do. Biyork *et al.* neither showed due diligence by examining/re-examining their records or corresponding with their customers in the United States regarding possible misclassified entries, nor requested an extension of the deadline to do so.

Finally, Biyork *et al.* argue that there is sufficient information on the record to determine that "at least some, if not all, of the submitted 'no shipment' certifications were, in fact, correct." Without evidence, this argument is mere speculation. For example, Biyork *et al.* belatedly argue that unrelated importers may have filed inaccurate entry information, stating that the goods in question

¹⁴⁰ *Id.* at 10 (citing *Non-Market Economy Antidumping Proceedings, Assessment of Antidumping Duties*, 76 FR 65694 (October 11, 2011)).

¹⁴¹ See Petitioner's Rebuttal Brief at 5 - 7.

¹⁴² *Id.* at 5 - 6 (citing Memorandum, "No Shipments Certifications and CBP Information," dated October 18, 2019 (October 18, 2019, No Shipment Memorandum)).

¹⁴³ *Id.* at 6 (citing to Biyork *et al.*'s July 8, 2020, Case Brief at 7 - 8).

¹⁴⁴ See Memoranda, "No Shipments Inquiry," dated June 25, 2019 and "No Shipment Inquiry," September 26, 2019 (September 26, 2019, No Shipment Memorandum).

¹⁴⁵ See October 18, 2019, No Shipment Memorandum. Commerce publicly identified the following companies: Dalian Jaenmaken Wood Industry Co., Ltd.; Guangzhou Homebon Timber Manufacturing Co., Ltd.; Linyi Anying Wood Co., Ltd.; Zhejiang Biyork Wood Co., Ltd.; Zhejiang Jiechen Wood Industry Co., Ltd.; and Zhejiang Simite Wooden Co., Ltd. Counsel's Letter also requested that Commerce release "particulars" of the June 25, 2019, No Shipment Memorandum and September 26, 2019, No Shipment Memorandum (e.g., the names of customers in the United States). Commerce notes that this business proprietary information belongs to CBP, and Commerce cannot, therefore, publicly identify this information.

were within scope. However, Biyork *et al.* has not provided evidence to this effect. As noted in the No Shipment Memorandum, U.S. entry documentation related to Biyork *et al.* is on the record and this information remains materially uncontested.¹⁴⁶ Having missed the deadline to provide an explanation for the discrepancy between the companies' no shipment claims and the CBP data, the arguments put forward by Biyork *et al.* in their case brief are as untimely as they are insufficient. For these reasons, we continue to consider these companies to be part of the China-wide entity for the final results.

Comment 11: Whether Homebon Had Shipments

*Homebon's Arguments*¹⁴⁷

- In the *Preliminary Results*, Commerce assigned Homebon the China-wide rate because it found that the CBP data on the record contradicted Homebon's no shipment certification.
- After the *Preliminary Results*, Commerce allowed Homebon to submit a separate rate certification (SRC), which Homebon timely filed. In its SRC, Homebon certified that there have been no changes in the company's demonstrated independence from the Chinese government and that Homebon therefore continues to meet the criteria for obtaining a separate rate, as Commerce has found in prior reviews.
- No party provided comments or information to the contrary. Therefore, Commerce must determine that Homebon has demonstrated its eligibility for a separate rate in the final results.

Commerce's Position: We agree with Homebon. CBP entry data placed on the record of this review indicates that Homebon exported subject merchandise to the United States during the POR.¹⁴⁸ However, Homebon maintained its claim that the company did not have a sale of subject merchandise during the POR because Homebon included the sale at issue as part of its separate rate application (SRA) during the previous POR (*i.e.*, the AR covering the period December 1, 2016 through November 30, 2017).¹⁴⁹ Therefore, we allowed Homebon to submit a SRC.¹⁵⁰

In the previous review, we considered the discrepancies between CBP entry data and Homebon's SRA and determined that Homebon sufficiently explained any inaccuracies and provided entry documentation to substantiate that it had a suspended entry during the POR.¹⁵¹ Additionally, Homebon provided the same the entry documentation in the previous review as it did in the instant review, which further supports the company's claim. Therefore, we determine that Homebon had no shipments of subject merchandise during the POR.¹⁵²

Comment 12: Whether to Continue to Apply a Zero Dumping Margin to the Separate Rate Companies

¹⁴⁶ See October 18, 2019, No Shipment Memorandum.

¹⁴⁷ See Homebon's Letter.

¹⁴⁸ See September 26, 2019, No Shipment Memorandum and October 18, 2019, No Shipment Memorandum.

¹⁴⁹ See Homebon's Letter, "Multilayered Wood Flooring from People's Republic of China: Request to Submit SRC," dated February 14, 2020.

¹⁵⁰ See Commerce Letter re: 2017 – 2018 Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Response to Request to Submit Separate Rate Certification, dated April 1, 2020.

¹⁵¹ See 2016-2017 *Final Results*, and accompanying IDM at Comment 14.

¹⁵² See *Final Results* FR at section "Final Determination of No Shipments."

Several parties argue that Commerce should make no changes to the *Preliminary Results* with respect to the margin applied to the non-selected respondents.¹⁵³

Commerce's Position: For the final results, we determine that sales of subject merchandise by Jinlong and Guyu have not been made at prices below normal value. As explained in the accompanying *Federal Register* notice, we assigned the non-examined respondents which qualify for a separate rate the only calculated POR margin available, the zero margin assigned to the two mandatory respondents.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results of review in the *Federal Register*.



Agree

Disagree

11/20/2020

X



Signed by: JOSEPH LAROSKI

Joseph A. Laroski
Deputy Assistant Secretary
for Policy and Negotiations

¹⁵³ See, e.g., Mudanjiang *et al.*'s Letter.