

Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States
Consol. Court No. 12-00007, Slip Op. 13-96 (July 31, 2013)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT ORDER

I. SUMMARY

The U.S. Department of Commerce (the “Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the “Court” or “CIT”) in *Baroque Timber*.¹ This litigation pertains to certain issues in the investigation of multilayered wood flooring (“MLWF”) from the People’s Republic of China (“PRC”).² Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Global USA, Inc., Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd. (collectively, “Samling”) and Zhejiang Layo Wood Industry Co., Ltd. (“Layo Wood”) are the mandatory respondents.

The CIT remanded to the Department six issues from the *Final Determination*, including three for which the Department requested a voluntary remand. Specifically, the CIT held that the Department should: 1) reconsider the surrogate value (“SV”) determination for Layo Wood’s plywood input; 2) reconsider the proper United States Harmonized Tariff Schedule (“HTS”) category for valuing Samling’s high-density fiberboard (“HDF”) input; 3) reconsider the SV

¹ See *Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States*, Consol. Court No. 12-00007, Slip Op. 13-96 (July 31, 2013) (“*Baroque Timber*”).

² See *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (“*Final Determination*”), as amended by *Multilayered Wood Flooring From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 FR 76690 (December 8, 2011) (“*Amended Final Determination*”).

applied to Layo Wood's core veneer input; 4) provide further explanation or reconsideration of the SV calculation of Layo Wood's HDF input; 5) provide further explanation or reconsideration of its reasons for not adjusting Layo Wood's brokerage and handling ("B&H") SV to account for costs associated with letter of credit; and 6) reconsider its application of the targeted dumping method in light of changes to SVs and in conformity with current standards, with the understanding that reconsideration of the above issues may result in the statutory test for application of the targeted dumping method no longer being met.

For the purposes of this remand redetermination, the Department made the following revisions: (1) we valued Layo Wood's plywood input with a SV reflecting plywood thicknesses of 6.35 millimeters ("mm") and 12.7 mm; (2) we valued Samling's HDF with Philippine HTS category 4411.11 ("fiberboard greater than 0.8 G/Cm³, not worked or surface covered"); (3) we valued Layo Wood's core veneer input with 2009 data reported by the Global Trade Atlas ("GTA") for Philippine HTS category 4408.9090.06 ("sheets for plywood"); (4) we provided further explanation for the Department's determination to continue converting the SV for Layo Wood's HDF using the average density of HDF used by Layo Wood; (5) we adjusted Layo Wood's B&H SV to remove letter of credit costs not incurred by Layo Wood; and (6) we calculated Layo Wood's and Samling's dumping margins using an average-to-average comparison method, rather than the average-to-transaction comparison method. As a result of changes made pursuant to this remand, the Department also revised the margin applied to the

separate rate respondents that are plaintiffs in this action.³ Complete analysis of all issues is included in section II, below.

On October 23, 2013, the Department released a draft of its redetermination (“Draft Redetermination”) to interested parties and provided interested parties with an opportunity to comment on the draft. On October 29, 2013, the Department received comments on the Draft Redetermination from the Coalition for American Hardwood Parity (“Petitioner”)⁴ and mandatory respondents Layo Wood⁵ and Samling.⁶ The Department also received comments on the Draft Redetermination on October 29, 2013, from separate rate companies Fine Furniture,⁷ Hawd Flooring,⁸ Jisen Wood,⁹ Dexin Wood,¹⁰ Yingyi-Nature,¹¹ Karly Wood,¹² and Armstrong Wood,¹³ as well as interested party Lumber Liquidators Services, LLC (“Lumber Liquidators”).¹⁴ The Department has addressed these interested parties’ comments in section III, below.

³ The separate rate respondents which are plaintiffs in this action are as follows: Changzhou Hawd Flooring Co., Ltd. (“Hawd Flooring”); Dunhua City Jisen Wood Industry Co., Ltd. (“Jisen Wood”); Dunhua City Dexin Wood Industry Co., Ltd. (“Dexin Wood”); Dalian Huilong Wooden Products Co., Ltd. (“Huilong Wooden Products”); Kunshan Yingyi-Nature Wood Industry Co., Ltd. (“Yingyi-Nature”); Karly Wood Product Ltd. (“Karly Wood”); Fine Furniture (Shanghai) Ltd. (“Fine Furniture”); and Armstrong Wood Products (Kunshan) Co., Ltd. (“Armstrong Wood”).

⁴ See Submission from Petitioner, “Multilayered Wood Flooring from the People’s Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order,” dated October 29, 2013.

⁵ See Submission from Layo Wood, “Multilayered Wood Flooring from the People’s Republic of China: Comments on Draft Remand Results; Consol. Ct. No. 12-00007 Baroque Timber, et al. v. United States,” dated October 29, 2013.

⁶ See Submission from Samling, “Samling Group’s Comments on the Remand Redetermination in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People’s Republic of China,” dated October 29, 2013.

⁷ See Submission from Fine Furniture, “Multilayered Wood Flooring from the People’s Republic of China: Comments of Fine Furniture (Shanghai) Limited on Draft Results of Redetermination Pursuant to Court Order (Consol. Ct. No. 12-00007, Slip Op. 13-96 (CIT 2013)),” dated October 29, 2013.

⁸ See Submission from Hawd Flooring, Jisen Wood, Dexin Wood, Yingyi-Nature Wood, and Karly Wood, “Multilayered Wood Flooring from the People’s Republic of China: Comments on Draft Remand Results; Consol. Ct. No. 12-00007 Baroque Timber, et al. v. United States,” dated October 29, 2013.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See Submission from Lumber Liquidators and Armstrong Wood, “Draft Redetermination Comments: Multilayered Wood Flooring from the People’s Republic of China,” dated October 29, 2013.

¹⁴ See *id.*

II. REMANDED ISSUES

1. Valuing Layo Wood's Plywood Input

A. Background

In the *Final Determination*, the Department found that the best available SV for Layo Wood's plywood input was based upon the average prices for 2009 of three plywood thicknesses (4.7625 mm, 6.35 mm, and 12.7 mm) from the Philippine Forest Management Bureau ("FMB") pricing data for lauan plywood, inflated to the period of investigation ("POI"). Layo Wood claimed that its plywood input thicknesses ranged from 7 mm to 16 mm and that we should have averaged the Philippine FMB prices for the following thicknesses: 6.35 mm, 12.7 mm, and 19.05 mm. However, because of conflicting record evidence (*i.e.*, Layo Wood described its maximum plywood thickness as both 15 mm and 16 mm)¹⁵ the Department requested and was granted a remand to clarify the record evidence and to revise the determination, if warranted, regarding the most appropriate plywood SV for valuing Layo Wood's plywood input.¹⁶

B. Analysis

In accordance with the Court's remand order, we have reconsidered the proper plywood SV to use for Layo Wood's plywood input. To clarify the record discrepancy, on August 6, 2013, the Department issued Layo Wood a supplemental questionnaire, and requested that Layo Wood clarify whether the maximum thickness of its plywood input is 15 mm or 16 mm and to support its response with record evidence.¹⁷ On August 8, 2013, Layo Wood stated that it

¹⁵ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China; Layo Comment for Preliminary Determination," dated May 2, 2011, at 20 (stating that the plywood used by Layo Wood had a thickness of 7 mm to 15 mm); see also Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 7, 2011, at Exhibit SQ2-35.

¹⁶ See *Baroque Timber*, Slip Op. 13 – 96 at 9.

¹⁷ See Letter from the Department to Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Clarification Supplemental Questionnaire on Zhejiang Layo Wood Industry Co., Ltd.'s Plywood Input," dated August 6, 2013, at 1.

purchased plywood with a thickness ranging between 7 mm and 16 mm, and cited to its April 7, 2011, supplemental questionnaire response at Exhibit SQ2-25.

On August 13, 2013, Petitioner¹⁸ submitted comments, first arguing that Layo Wood did not purchase plywood with thicknesses ranging between 7 mm to 16 mm during the POI, but instead purchased plywood with different thicknesses, citing Layo Wood's Exhibit SQ2-35, POI plywood core inventory movement worksheet.¹⁹ Using quantities and thicknesses of Layo Wood's POI plywood purchases from the POI plywood core inventory movement worksheet,²⁰ Petitioner calculated a weighted-average plywood SV that purportedly reflects a SV, by thickness, that is closest to the thickness of Layo Wood's purchased plywood.²¹

Petitioner then claims that Exhibit SQ3-24 of Layo Wood's May 17, 2011, supplemental questionnaire response (containing Layo Wood's plywood warehouse reconciliation worksheet) demonstrates that Layo Wood consumed plywood with thicknesses lower than its stated purchased plywood thickness of 6 mm. Petitioner claims that, if the Department were to use plywood consumption, and not solely purchases, record evidence supports the continued use of the 4.7625 mm-thick plywood as an SV for Layo Wood's plywood input.

On August 26, 2013, Layo Wood filed rebuttal comments, stating that Petitioner's proposed new methodology to value the plywood SV is outside the scope of the Court's remand, and the Department has no authority to revisit the methodology applied in the *Final Determination*.²² Also, Layo Wood notes that Petitioner did not appeal the Department's *Final Determination* methodology and, therefore, Petitioner failed to exhaust its administrative

¹⁸ The Coalition for American Hardwood Parity.

¹⁹ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 7, 2011, at Exhibit SQ2-35.

²⁰ See *id.*

²¹ See Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China," at Attachment 2, dated August 13, 2013.

²² See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal to Petitioner's Comments on Layo Wood Questionnaire Response," dated August 26, 2013.

remedies to challenge the *Final Determination* methodology. Layo Wood also contends that the Department should not use one methodology for Layo Wood and another methodology for the other two respondents. Layo Wood contends that if the Department were to consider Petitioner's proposed new plywood SV methodology, this methodology artificially reduces the thicknesses of Layo Wood's purchases and, thus, artificially raises the plywood SV.

As an initial matter, we address Layo Wood's argument in its August 26, 2013, filing, that Petitioner's proposed new methodology for valuing Layo Wood's plywood is outside the scope of the Court's remand, or that the Department does not have the authority to revisit the methodology applied in the *Final Determination*. We disagree. The Court granted the Department's request to reconsider the SV determination for Layo Wood's plywood SV; as a result, we believe we have the authority to consider Petitioner's comments on the appropriate SV and what methodology should be used to value Layo Wood's plywood SV. However, as explained below, we do not agree with Petitioner's proposed method for valuing Layo Wood's plywood SV, nor do we agree with Petitioner's argument that Layo Wood's plywood warehouse reconciliation worksheet demonstrates that Layo Wood consumed a certain thickness of plywood which is less than 6 mm. We note that Layo Wood's specific plywood thicknesses are proprietary and can be found in the proprietary analysis memo accompanying this remand redetermination.²³

First, we address Petitioner's argument that there is record evidence that Layo Wood *consumed* plywood which is less than 6 mm thick. Although the plywood warehouse reconciliation worksheet shows that plywood with thicknesses of less than 6 mm was withdrawn from warehouse for consumption, we note that Layo Wood produces both subject and non-

²³ See Memorandum to the File from Brandon Farlander, International Trade Analyst, AD/CVD Operations, Office IV, Enforcement and Compliance, "Final Remand Redetermination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd.," dated November 14, 2013 ("Layo Wood Final Remand Analysis Memorandum").

subject merchandise,²⁴ and there is no record evidence that Layo Wood used plywood with less than 6 mm thickness to make subject merchandise.²⁵ In this regard, Layo Wood's POI plywood core inventory movement worksheet encompasses all of its products, not just subject merchandise.²⁶ As detailed in the Layo Wood verification report, the sheets of plywood withdrawn from the plywood core warehouse during the POI were used to produce both subject and non-subject merchandise, such as plywood core and parquet flooring.²⁷ In contrast, there is specific record evidence that in the production of subject merchandise Layo Wood used plywood that is closer to the 6.35 mm and 12.7 mm SV.²⁸ Therefore, we disagree with Petitioner's contention that we should consider the plywood with thickness less than 6 mm in calculating Layo Wood's plywood SV.

Second, we agree with Petitioner that an examination of Layo Wood's Exhibit SQ2-35, POI plywood core inventory movement worksheet,²⁹ confirms that the thicknesses of Layo Wood's POI plywood *purchases* did not range between 7 mm and 16 mm.³⁰ However, the Department's practice is to calculate normal value based on the *consumption* of an input during

²⁴ See Memorandum to the File, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 18, 20, 30, and 32; see also Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 7, 2011, at 9-10.

²⁵ See Memorandum to the File, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 34.

²⁶ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 7, 2011, at 18.

²⁷ See Memorandum to the File, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 34.

²⁸ See Memorandum to the File, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at verification exhibits 4 (page 7), 7 (page 3), 10 (page 1), 17 (page s 1-4), and 21 (page 1), where the specific plywood thickness used to make a particular product which was subject merchandise is reported; see also Layo Wood Final Remand Analysis Memorandum.

²⁹ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 7, 2011, at Exhibit SQ2-35.

³⁰ See Layo Wood Final Remand Analysis Memorandum, for the actual plywood thicknesses purchased by Layo Wood, as these data are business proprietary.

the POI, not the *purchases* of an input during the POI.³¹ Therefore, we do not agree that Petitioner's methodology of calculating a plywood SV based on only Layo Wood's *purchases* during the POI is more accurate for valuing Layo Wood's plywood FOP. Layo Wood's POI plywood core inventory movement worksheet records plywood withdrawn for consumption during the POI,³² and this plywood had a different range of thicknesses than Layo Wood's purchased plywood.³³

Therefore, we have determined that the most appropriate plywood SV for Layo Wood should include only plywood of two thicknesses, 6.35 mm and 12.7 mm, rather than the 4.7625 mm, 6.35 mm and 12.7 mm plywood SVs used in the final determination. To calculate the plywood SV, we have averaged the SVs for 6.35 mm and 12.7 mm because it more accurately represents Layo Wood's actual usage, and we have not included the 4.7625 mm and 19.05 mm thick SVs.³⁴ We note that this methodology is the same as in the final determination, however, we are reconsidering only Layo Wood's plywood thickness sizes as a result of the remand order, and not the plywood thickness sizes of the other two mandatory respondents.

³¹ See section 773(c)(1)(B) of the Tariff Act of 1930, as amended (the "Act"), which says that "the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise"; see also the Department's original questionnaire, dated January 10, 2011, at page D-1 of Section D, stating: "Normally, you should calculate the per-unit factor amounts based on the actual inputs used by your company during the POI as recorded under your normal accounting system." In response to the Department's January 10, 2011, questionnaire, on page 10 of its Section D questionnaire response, dated February 22, 2011, Layo Wood stated that it reported per unit factors of production ("FOPs") for materials consumption for each control number.

³² See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 7, 2011, at Exhibit SQ2-35.

³³ See Layo Wood Final Remand Analysis Memorandum, for the thickness range for plywood consumed but not purchased or self-produced during the POI, as these data are business proprietary.

³⁴ See *id.*

2. Valuing Samling's High Density Fiberboard Input

A. Background

In the *Preliminary Determination*,³⁵ the Department found that the best available SV with which to value both Samling's and Layo Wood's HDF inputs was the value derived from Philippine HTS category 4411.19 ("fiberboard greater than 0.8 G/Cm³, not elsewhere specified").³⁶ In its submissions, Samling reported that the HDF it used in the production of MLWF had a density above 800 kilograms ("kg") per cubic meter, but did not provide additional information concerning the type of HDF it used.³⁷ The Department converted the HTS categories' average unit values ("AUVs") from kg to cubic meter based on 840 kg per cubic meter, which was the average of the HDF density range provided by Petitioner.³⁸ Samling did not provide a defined range of its HDF densities (other than indicating that they were above 800 kg per cubic meter), so the Department used the simple average of the HDF density range provided by Petitioner.

In the *Final Determination*, the Department continued to value Samling's HDF input with HTS category 4411.19. In contrast, the Department agreed with Layo Wood's argument to value Layo Wood's HDF input using a different HTS category describing HDF that is "not worked or surface covered."³⁹ As a result, the Department valued Layo Wood's HDF using a simple average of HTS categories 4411.21 ("fiberboard greater than 0.5 G/Cm³ and less than or

³⁵ See *Multilayered Wood Flooring From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 30656 (May 26, 2011) ("*Preliminary Determination*"), amended by *Multilayered Wood Flooring From the People's Republic of China: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 37316 (June 27, 2011).

³⁶ See Memorandum to the File from Brandon Farlander, International Trade Compliance Analyst, Office 4, AD/CVD Operations, "Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Surrogate Value Memorandum," dated May 19, 2011, at 7.

³⁷ See, e.g., Submission from Samling, "Samling Group Surrogate Value Submission in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China," dated March 15, 2011, at 3.

³⁸ See Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China," dated March 15, 2011, at Exhibit 13.

³⁹ See *Final Determination* and accompanying Issues and Decision Memorandum, at 81-82.

equal to 0.8 G/Cm³, not worked or surface covered”) and 4411.11 (“fiberboard greater than 0.8 G/Cm³, not worked or surface covered”). In the ministerial error memorandum, the Department explained that it intended to value Samling’s HDF using HTS category 4411.19, while valuing Layo Wood’s HDF using a simple average of HTS categories 4411.11 and 4411.21, because only Layo Wood argued that its HDF SV should be changed.⁴⁰

During litigation, Samling argued that the Department accepted new information concerning Layo Wood’s HDF input during Layo Wood’s verification, without providing Samling a similar opportunity to submit additional information concerning its HDF input.⁴¹ As a result, Samling argues, the Department changed the HTS category used to value Layo Wood’s HDF input in the *Final Determination*, but continued valuing Samling’s HDF with the same HTS category used in the *Preliminary Determination*.⁴² Samling argues that the Department should value its HDF input with one of the same HTS numbers used for Layo Wood, *i.e.*, HTS category 4411.11 (“fiberboard greater than 0.8 G/Cm³, not worked or surface covered”).

The Court granted the Department’s request for a remand to reconsider the proper HTS category for valuing Samling’s HDF input.⁴³ On August 6, 2013, we issued a supplemental questionnaire, asking Samling to point to existing record evidence that identifies whether or not its HDF is “worked or surface covered.”⁴⁴ Samling submitted its response to the Department’s supplemental questionnaire on August 8, 2013, and stated that there was no information on the

⁴⁰ See Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Determination of Antidumping Duty Investigation on Multilayered Wood Flooring from the People’s Republic of China: Allegations of Ministerial Errors,” dated November 7, 2011, at 8.

⁴¹ See Respondents’ Brief to the CIT, dated September 4, 2012, at 68-69.

⁴² See *id.*, at 68.

⁴³ See *Baroque Timber*, Slip Op. 13-96, at 11.

⁴⁴ See Letter to Samling from the Department, “Multilayered Wood Flooring from the People’s Republic of China: Clarification Question on the Samling Group’s HDF Input,” dated August 6, 2013.

existing record, but requested the opportunity to place new information on the record.⁴⁵ On August 13, 2013, Petitioner filed comments on Samling's supplemental questionnaire response. On August 26, 2013, Samling filed unsolicited comments on the nature of its HDF, and stated that it believed that the Court had indicated that the information was necessary and appropriate for the Department to determine the appropriate SV to assign to Samling's HDF. On September 5, 2013, the Department rejected Samling's August 26, 2013, filing, explaining that it was an unsolicited and untimely questionnaire response.⁴⁶

B. Analysis

In accordance with the remand order, we have reconsidered the HTS category used to value Samling's HDF input. In its August 13, 2013, comments, Petitioner argues that "Layo {Wood}, unlike Samling, took multiple opportunities both before and after its verification to factually support its claimed HDF classification" of fiberboard that was not worked or surface covered, and that by not submitting similar information on its HDF input, Samling did not meet its burden of establishing the factual record.⁴⁷ Therefore, Petitioner argues, the Department should now not allow Samling to submit evidence after the investigation because it is well-established that the burden was on Samling to establish the factual record.⁴⁸

Upon reviewing the record, we note that Layo Wood's questionnaire responses and exhibits explicitly state only that Layo Wood purchased fiberboard, and do not state whether

⁴⁵ See Submission from Samling, "Samling Group's Response to Supplemental Remand Questionnaire in the Antidumping Investigation of Multilayered Wood Flooring from the People's Republic of China," dated August 8, 2013.

⁴⁶ See Letter from the Department to Samling, "Multilayered Wood Flooring from the People's Republic of China: Rejection of Unsolicited Submission," dated September 5, 2013.

⁴⁷ See Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China," dated August 13, 2013, at 4.

⁴⁸ See, e.g., *QVD Food Co., Ltd. v. United States*, Slip Op. (CIT Sept. 12, 2011 ("the burden of creating an adequate record lies with {interested parties} and not with Commerce.") citing to *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) and *NTN Bearing Corp. of Am. v. United States*, 997 F.2d 1453, 1458-59 (Fed. Cir. 1993).

Layo Wood's fiberboard was worked or surface covered.⁴⁹ Further, Layo Wood's SV submissions concerning fiberboard (medium density fiberboard ("MDF") and HDF) focused on the following data: fiberboard density and thickness; Chinese national standard; and the most appropriate HTS code(s) and corresponding SV data.⁵⁰ This is generally the same information that Samling provided regarding its HDF.⁵¹ Therefore, we do not agree with Petitioner that Samling failed to provide the same amount of information concerning its HDF input as did Layo Wood.

Upon further review of the documents cited by Samling,⁵² we disagree with certain aspects of Samling's argument. First, we disagree that the Department allowed Layo Wood to submit additional information during verification, without affording Samling the same opportunity. During verification, the Department officials merely took a plant tour of Layo

⁴⁹ See *id.*, citing Layo Wood's "Supplemental Section A and C Questionnaire Response," dated April 5, 2011, at Exhibit SQ2-9, and Layo Wood's "Supplemental Questionnaire Response," dated May 17, 2011, at Exhibit SQ3-29 (both providing material purchase invoices for fiberboard in which the merchandise is identified only as "medium density fiberboard" or "MDF").

⁵⁰ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Selection Comments," dated March 15, 2011 (751 page submission), at Exhibits 5 (FOP description and HTS codes and SVs) and 6 (Philippine WTA data at the 6-digit HTS level); Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Layo Comment for Preliminary Determination," dated May 2, 2011, at Exhibit 8 (FOP description and HTS codes and SVs).

⁵¹ See Submission from Samling, "Samling Group Surrogate Value Submission in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China," dated March 15, 2011, at 3 and Exhibit 4 (providing Samling's fiberboard density, suggested HTS code(s), and corresponding SV data); see also Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Resubmission of July 5, 2011 Surrogate Values for Final Investigation, dated August 3, 2011, at Exhibits 7 (GTA import data from the Philippines) and 9 (Chinese national standard for MDF fiberboard).

⁵² See Respondents' Brief to the CIT, dated September 4, 2012, at 62-70; see also Submission from Samling, "Samling's Clerical Error Submission for the Final Determination: Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China," dated October 19, 2011; Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Determination of Antidumping Duty Investigation on Multilayered Wood Flooring from the People's Republic of China: Allegations of Ministerial Errors," dated November 7, 2011, at 8; *Final Determination* and accompanying Issues and Decision Memorandum, at Comment 20; Memorandum to the File from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Final Surrogate Value Memorandum," dated October 11, 2011, at 3-4; Memorandum to the File from Brandon Petelin, International Trade Analyst, AD/CVD Operations, Office 4, Import Administration, "Final Determination Analysis Memorandum for the Samling Group," dated October 11, 2011, at Attachments I and 3.

Wood's manufacturing facility, in which Layo Wood uses HDF.⁵³ In this regard, Layo Wood's administrative case brief states only that "{a}s the Department official witnessed in the verification plant tour, the fiberboard that Layo {Wood} consumes are not worked or surface covered. . . ."⁵⁴

Upon additional review of the record of this investigation, including verification exhibits,⁵⁵ we are unable to identify any new submission of information about its HDF input that Layo Wood allegedly submitted to the Department during verification. As a result, we find that the Department did not provide an opportunity to Layo Wood which was denied to Samling, and we do not find it necessary to reopen the record in order to allow Samling to submit additional information about its HDF input.⁵⁶ In addition, unlike Layo Wood, Samling did not make an argument in its case brief concerning its HDF SV. Furthermore, we agree with Petitioner that it is the responsibility of the interested parties, not the Department, to create an adequate record with relevant factual information.

We have, nevertheless, reviewed the existing record and reconsidered the proper HTS category for Samling's HDF input. It is the Department's practice, when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, to select, to the extent practicable, SVs which are product-specific, representative of a broad market

⁵³ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Resubmission of August 5, 2011 Case Brief," dated August 15, 2011, ("Layo Wood Case Brief"), at 25, citing Memorandum to the File, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 12-13.

⁵⁴ See Layo Wood Case Brief, at 25.

⁵⁵ See Memorandum to the File from Brandon Farlander, Senior International Trade Analyst, Heidi Schriefer, Senior Accountant, and John Hollwitz, International Trade Analyst, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at Verification Exhibits 4, 5, 11, 13, 20, and 22.

⁵⁶ The Department rejected Samling's August 26, 2013, filing, in which it attempted to provide new evidence regarding the nature of its HDF input.

average, publicly available, and contemporaneous with the POI.⁵⁷ After reconsideration, we agree with Samling that the most appropriate HTS category with which to value its HDF input is HTS category 4411.11, which corresponds to fiberboard over 800 kg per cubic meter, which is not worked or surface covered.

Samling stated in its response to the Department's August 6, 2013, supplemental remand questionnaire that it uses HDF as one type of core material for its MLWF, and that its own process of producing MLWF involves covering the core material (*i.e.*, HDF) with wood veneers, indicating that the core material would not be surface-covered or worked prior to being overlaid by wood face veneer.⁵⁸ Samling also stated that if it had used HDF inputs that had undergone further processing (*i.e.*, working or surface covering), it would have had to report this fact in response to the Department's supplemental questionnaires.⁵⁹ Our review of the record indicates that Samling did not report using HDF that had undergone working or surface covering prior to Samling's manufacturing processes.⁶⁰ Finally, we note that the Department's change to the HDF SV for Layo Wood in the *Final Determination* was based on Layo Wood's argument in its case brief, which referenced Department officials' verification plant tour review of Layo

⁵⁷ See *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) ("*Certain Artist Canvas*") and accompanying Issues and Decision Memorandum, at Comment 2.

⁵⁸ See Submission from Samling, "Samling Group's Response to Supplemental Remand Questionnaire in the Antidumping Investigation of Multilayered Wood Flooring from the People's Republic of China," dated August 8, 2013.

⁵⁹ See *id.*

⁶⁰ See, e.g., Submissions from Samling, "Samling Group Riverside Plywood Corporation Section D Response," "Samling Group Times Flooring Section D Response," and "Samling Group Baroque Timber Industries Section D Response," all dated February 28, 2011, at 11-13 (raw material sections) and Exhibits D-1 (FOP printout input labels), D-2 (production diagrams), D-3 (production information at different production stages), D-6 (FOP spreadsheets, under description of the FOP), D-8 (wood input calculation worksheets), and D-9 (wood input worksheets); see also Submissions from Samling, "Samling Group Surrogate Value Submission," dated March 15, 2011; "Samling Group Addendum to Surrogate Value Submission," dated March 16, 2011; "Samling Group Surrogate Value Rebuttal," dated March 21, 2011; "Post-Preliminary Surrogate Value Submission for Samling Group," dated July 5, 2011; and "Refiling of Post-Preliminary Surrogate Value Submission for Samling Group," dated August 3, 2011.

Wood's production process.⁶¹ Likewise, upon reconsideration of evidence on the record, we find that Department officials also verified the MLWF production process of Samling during its verification plant tours of Samling's production facilities.⁶² We now find that similar evidence exists on the record for both Layo Wood and Samling which supports valuation of the HDF used by both companies in the center of their products with HTS categories corresponding to HDF that is not worked or surface covered.⁶³ Thus, upon reconsideration of the issue of the proper HTS category for Samling's HTS input, we find that the most product-specific category is HTS category 4411.11, and we have recalculated Samling's margin using the average unit value from this HTS category.⁶⁴ Additionally, Samling did not challenge the Department's conversion of the HTS category from United States dollars ("USD") per kg to USD per cubic meter, for which we used 840 kg per cubic meter, which is the average density of HDF submitted by Petitioner. Therefore, we have continued using this conversion with the revised HTS category.

⁶¹ See *Final Determination* and accompanying Issues and Decision Memorandum, at Comment 20; see also Layo Wood Case Brief at 25; Memorandum to the File from Brandon Farlander, Senior International Trade Analyst, Heidi Schriefer, Senior Accountant, and John Hollwitz, International Trade Analyst, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 12-13.

⁶² See Memorandum to the File from Brandon Petelin, International Trade Analyst, and Drew Jackson, Senior International Trade Analyst, "Verification of Sales and Factors Response of Riverside Plywood Corporation and Samling Riverside Co., Ltd. in the Less-than-Fair-Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 9 (stating that Department officials toured the production facility of Riverside Plywood Corporation and observed the entry of raw materials into the production process for multilayered wood flooring); see also Submission from Samling, "Samling Group Riverside Plywood Corporation Section D Response," dated February 28, 2011, at 12-13, footnote 2 (stating "RPC uses veneer for all merchandise under consideration and uses either HDF or plywood as the core of the product...").

⁶³ See Memorandum to the File from Brandon Farlander, Senior International Trade Analyst, Heidi Schriefer, Senior Accountant, and John Hollwitz, International Trade Analyst, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 12-13; see also Memorandum to the File from Brandon Petelin, International Trade Analyst, and Drew Jackson, Senior International Trade Analyst, "Verification of Sales and Factors Response of Riverside Plywood Corporation and Samling Riverside Co., Ltd. in the Less-than-Fair-Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 9.

⁶⁴ See Memorandum to the File from Erin Kearney, International Trade Analyst, AD/CVD Operations, Office IV, Enforcement and Compliance, "Final Remand Redetermination Analysis Memorandum for the Samling Group," dated November 14, 2013 ("Samling Final Remand Analysis Memorandum").

3. Valuing Layo Wood's Core Veneer Input

A. Background

In the *Final Determination*, the Department found that the best available SV with which to value Layo Wood's non-coniferous, non-tropical core veneer was to use Philippine National Statistics Office ("NSO") data for the 8-digit HTS basket category 4408.9090.⁶⁵ Layo Wood had argued that the most appropriate HTS category to value its core veneer was HTS 4408.9090.06 (sheets for plywood) and presented evidence that there are no imports during the POI for this 10-digit category and, therefore, there were no imports in the 8-digit HTS category 4408.9090. Also, Layo Wood argued that the core veneer SV cannot be more expensive than the face veneer SV. The Court agreed with Layo Wood and ordered the Department to reconsider our core veneer SV determination.⁶⁶

B. Analysis

In accordance with the Court's remand order, we have reconsidered the HTS category with which we may most accurately value Layo Wood's core veneer input. It is the Department's practice, when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, and contemporaneous with the POI.⁶⁷ After examining the core veneer SVs on the record,⁶⁸ the

⁶⁵ See *Final Determination* and accompanying Issues and Decision Memorandum, at 73-74.

⁶⁶ See *Baroque Timber*, Slip Op. 13 – 96 at 24.

⁶⁷ See *Certain Artist Canvas* and accompanying Issues and Decision Memorandum, at Comment 2.

⁶⁸ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Selection Comments," dated March 15, 2011 (10 page submission), at Exhibit 1 (plywood core veneer prices from Indonesia); see also Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Selection Comments," dated March 15, 2011 (751 page submission), at Exhibit 6 (Philippine WTA data at the 6-digit HTS level); Submission from Samling, "Samling Group Surrogate Value Submission in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China," dated March 15, 2011, at Exhibit 2 (Indonesian GTA data); Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China," dated March 21, 2011, at Exhibit 9 (surrogate

Department determines that the most appropriate core veneer SV is the 2009 SV data for HTS 4408.9090.06 from the Philippines, as reported by GTA because this HTS category is for sheets for plywood, which is most specific to Layo Wood's input.⁶⁹ In its questionnaire responses, Layo Wood reported that it used wood chips, such as eucalyptus chips, and wood sheets for its core veneer FOPs, which match the HTS category.⁷⁰ The 2009 GTA import data, while not contemporaneous with the POI, can be adjusted for inflation, and is the best data for which to value Layo Wood's core veneer FOPs because GTA data is country-wide and is more representative than price quotes. Concerning Petitioner's argument that the 2009 GTA import data are only from one country and have a low volume, we disagree that 10.761 cubic meters of sheets of plywood from a single country (Singapore) is too low of a quantity to have usable import data for SV purposes because there is no record evidence demonstrating that these import quantities are abnormally low and there is no record evidence demonstrating that core veneer is not internationally traded in such quantities. Also, we agree with Layo Wood that record evidence demonstrates that the NSO SV data used in the *Final Determination* (NSO data for HTS category 4408.9090) does not contain imports from the 10-digit HTS category

values from GTA for several HTS codes from the POI from the Philippines); Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China; Layo Comment for Preliminary Determination," dated May 2, 2011, at 7-20, and Exhibits 6 and 7 (core veneer and log price quotes from Indonesia, Thailand, Uruguay, and Cambodia, as well as argument for averaging Indonesian plywood core log prices and finished plywood prices from the ITTO); Memorandum to the File from Brandon Farlander, International Trade Compliance Analyst, Office 4, AD/CVD Operations, "Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China: Surrogate Value Memorandum, dated May 19, 2011, at Exhibit 1 (for 2009 and POI NSO data at the 8-digit level); Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China," dated August 3, 2011, at Exhibits 14 (Moroccan and Indian GTA import data) and 15 (U.S. GTA import data); Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Resubmission of July 5, 2011 Surrogate Values for Final Investigation, dated August 3, 2011, at Exhibit 1a (GTA data for 2009 and the POI, for HTS 4408.9090.06).

⁶⁹ See Layo Wood Final Remand Analysis Memorandum.

⁷⁰ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Section C and D Questionnaire Response," dated February 22, 2011, at 10, 11 for Section C and 7, 10, 11, and Exhibit D-2 (FOP spreadsheet) for Section D.

(4408.9090.06), which is the most specific HTS category comparable to Layo Wood's core veneer input.⁷¹

In addition, the Court was concerned that the core veneer SV (U.S. \$300.08/cubic meter) was higher than the face veneer surrogate value (U.S. \$173.41/cubic meter). Because we have determined to use the 2009 GTA import data from the Philippines (*i.e.*, the surrogate country) to calculate the core veneer SV, based on our calculations, the core veneer SV (U.S. \$118.94/cubic meter) is now lower than the face veneer SV, which addresses the Court's concerns.⁷²

Finally, these 2009 GTA import data for HTS category 4408.9090.06 are from the Philippines, which is the surrogate country in this investigation, and the Department relies upon the primary surrogate country for all SVs, whenever possible, and resorts to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.⁷³ The Court has held this preference for valuing FOPs with information from a single surrogate country reasonable because deriving surrogate data from one surrogate country limits the amount of distortion introduced into the calculations because a domestic producer would be more likely to purchase a product available in the domestic market.⁷⁴ Accordingly, we have determined that the best available information regarding the appropriate and reliable SV data is from the Philippines, the surrogate country selected for this investigation; therefore, there is no need to use a SV from a different surrogate country.

⁷¹ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Resubmission of July 19, 2011 Surrogate Valuation Information for Final Determination," dated July 19, 2011, at Exhibit 1a.

⁷² See Layo Wood Final Remand Analysis Memorandum.

⁷³ 19 CFR 408(c)(2); see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012) and accompanying Issues and Decision Memorandum, at Comment 2A; *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum, at Comment 2.

⁷⁴ See *Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22, at 12-14 (CIT 2013).

4. Valuing Layo Wood's High Density Fiberboard Input

A. Background

In the *Final Determination*, the Department found that the best available SV for Layo Wood's HDF input was the average of two Philippine HTS categories which covered two ranges of HDF densities.⁷⁵ The Department explained that Layo Wood reported the HDF it used in the production of MLWF ranged in density from 760 to 880 kg per cubic meter, but the record of the proceeding did not contain information to indicate the percentage of Layo Wood's fiberboard with each specific density.⁷⁶ Thus, the Department found that the most accurate SV would be a simple average of the AUV of HTS category 4411.21 ("fiberboard greater than 0.5 G/Cm³ and less than or equal to 0.8 G/Cm³, not worked or surface covered") and the AUV of HTS category 4411.11 ("fiberboard greater than 0.8 G/Cm³, not worked or surface covered").⁷⁷ After averaging the AUVs from HTS categories 4411.11 and 4411.21, the Department stated that it converted the average of the HTS categories' AUVs from kg to cubic meter based on 820 kg per cubic meter.⁷⁸

Layo Wood had argued that the Department should value Layo Wood's HDF input with only the SV derived from HTS category 4411.11, because Layo Wood's average HDF density falls within the density range of that category. However, the Court found that it was reasonable for the Department to account for the full range of HDF densities used by Layo Wood and to value Layo Wood's HDF input using an average of the AUVs of HTS categories 4411.11 and 4411.21.

⁷⁵ See *Final Determination* and accompanying Issues and Decision Memorandum, at Comment 20.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See Memorandum to the File from John Hollwitz, International Trade Analyst, AD/CVD Operations, Office 4, Import Administration, "Final Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd.," dated October 11, 2011, at 4.

Layo Wood next argued that if the Department valued Layo Wood's HDF with the average of the AUVs of HTS categories 4411.11 and 4411.21, it should have first converted each separate AUV from kg to cubic meters using a density conversion specific to that HTS category, and then averaged those converted values. According to Layo Wood, separately converting each HTS category from USD per kg to USD per cubic meter would be more accurate because HTS category 4411.21, which covers HDF with a density greater than 500 kg per cubic meter and less than or equal to 800 kg per cubic meter, would be converted using a density within the density range of that category, rather than the average density for Layo Wood's input, 820 kg per cubic meter, which would otherwise fall within the density range of HTS category 4411.11. The Court found that the Department failed to provide an explanation for its decision to first average the AUVs of the HTS categories, and then convert the averaged HTS value using the density of 820 kg per cubic meter. The Court noted that "Commerce is afforded wide discretion in its selection and calculation of surrogate values," but that "Commerce has not provided any explanation for its decision to convert the average HTS value by the average density of Layo {Wood}'s fiberboard input."⁷⁹ The Court, therefore, remanded the issue to the Department for further explanation or reconsideration.⁸⁰

B. Analysis

In accordance with the Court's remand order, we are providing further explanation of the Department's determination regarding the SV used to value Layo Wood's HDF input. It is the Department's practice, when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available and

⁷⁹ See *Baroque Timber*, Slip Op. 13-96, at 27-28.

⁸⁰ See *id.*

contemporaneous with the POI.⁸¹ The Department found in the *Final Determination* that the best available information with which to value Layo Wood's HDF input, which ranges in density from 760 to 880 kg per cubic meter,⁸² was an average of the two HTS categories that comprise Layo Wood's full HDF density range: HTS categories 4411.11 and 4411.21. As stated above, HTS category 4411.21 includes HDF with a density greater than 500 kg per cubic meter and less than or equal to 800 kg per cubic meter, and HTS category 4411.11 includes HDF with a density greater than 800 kg per cubic meter.

The Court agreed with the Department's determination that the best available and most product-specific information with which to value Layo Wood's HDF was the combined AUV of the two HTS categories that correspond to the HDF density range reported by Layo Wood. We determined that first averaging the AUVs of HTS categories 4411.11 and 4411.21, prior to converting the resulting AUV from kg to cubic meters, would enable the Department to value Layo Wood's HDF input in a way that most closely resembled the way Layo Wood reported its HDF in its FOP database. Layo Wood reported its HDF as one input⁸³ covered by two separate HTS categories, rather than as two separate HDF inputs with densities falling into either HTS category 4411.11 or 4411.21. Thus, the Department calculated an SV for a single, product-specific category of HDF, covering the entire range of Layo Wood's HDF densities.

The Department followed its approach of first determining the most accurate, product-specific SV, and then applying the necessary conversion factor for the SV to be in the same unit as the FOP reported in the respondent's database. Such an approach is reasonable because it is

⁸¹ See *Certain Artist Canvas* and accompanying Issues and Decision Memorandum, at Comment 2.

⁸² See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section A and C Questionnaire Response," dated April 5, 2011, at 4.

⁸³ See Memorandum to the File from Erin Kearney, International Trade Analyst, AD/CVD Operations, Office 4, Import Administration, "Amended Final Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd.," dated November 7, 2011, at Attachment 2.

consistent with the fact that Layo Wood reported its HDF as one input. The Department explained that the best available information with which to convert the HDF SV from USD per kg to USD per cubic meter was a simple average of the range of densities reported by Layo Wood for its HDF input (*i.e.*, 760 to 880 kg per cubic meter, averaging 820 kg per cubic meter⁸⁴).

Despite Layo Wood's present argument that it is inappropriate for the Department to convert both HTS categories of HDF using the conversion factor of 820 kg per cubic meter, Layo Wood itself argued in its administrative case brief that the Department should convert its HDF SV from kg to cubic meters using the average density of its HDF. Layo Wood stated in its brief, "Layo {Wood} submits that the Department's conversion from kg to {cubic meters} should be revised and corrected based on the density of Layo {Wood}'s actual materials as verified by the Department," and that "the density of Layo {Wood}'s fiberboards ranged from 760 to 880 kg {per cubic meter}, averaging 820 kg {per cubic meter}."⁸⁵ Layo Wood also submitted a sample calculation in its case brief, in which it converted an HTS value for its HDF using the value of 820 kg per cubic meter.⁸⁶ The Department agreed with Layo Wood's suggestion to use 820 kg per cubic meter to convert the HTS surrogate value from kg to cubic meters, as it was the average of the HDF density range actually used by Layo Wood.

Therefore, we calculated Layo Wood's HDF SV by first calculating a simple average of the AUVs of the two HTS categories that encompassed the full range of HDF densities reported by Layo Wood. The AUV of HTS category 4411.11 is 0.379 USD per kg, and the AUV of HTS category 4411.21 is 0.701 USD per kg, making the simple average of these AUVs 0.54 USD per kg. We then converted 0.54 USD per kg to USD per cubic meter using Layo Wood's density of

⁸⁴ See Layo Wood Case Brief, at 27.

⁸⁵ See *id.*

⁸⁶ See *id.*, at 28.

820 kg per cubic meter, which results in an HDF SV for Layo Wood of 442.90 USD per cubic meter.

5. Layo Wood's Brokerage and Handling

A. Background

In the *Final Determination*, the Department valued B&H using data from the World Bank's *Doing Business 2011: Philippines* report.⁸⁷ Layo Wood argued that the survey from which the *Doing Business 2011: Philippines* data are gathered asks respondents to make a number of assumptions, including that the method of payment is a letter of credit, and that this assumption indicates that letter of credit costs are included in the *Doing Business 2011: Philippines* data. Layo Wood argued that because it did not use a letter of credit for shipping subject merchandise, the Department should deduct the letter of credit cost from the B&H SV.⁸⁸ In the *Final Determination*, the Department considered the arguments from Layo Wood concerning the deduction of certain expenses associated with letters of credit, but determined that there was "no indication on the record that the costs associated with procuring a letter of credit are assumed to be borne by the exporter."⁸⁹ The Department further noted that "the survey contains a list of all documents the survey assumes are required for import and export," and that "{l}etters of credit are not included on this list."⁹⁰ Thus, the Department did not deduct letter of credit procurement costs from the SV for B&H.⁹¹

The Court found the Department's argument unpersuasive, stating that "the absence of a letter of credit from this list does not negate the fact that survey respondents are told to assume the use of a letter of credit in constructing their survey response and asked for information

⁸⁷ See *Final Determination* and accompanying Issues and Decision Memorandum, at Comment 8.

⁸⁸ See Layo Wood Case Brief, at 64-70.

⁸⁹ See *id.*

⁹⁰ See *id.*

⁹¹ See *id.*

related to acquiring a letter of credit.”⁹² The Court also stated that “{i}t is unreasonable to assume the non-existence in the report of that which the report’s authors expect the survey respondents to assume.”⁹³ The Court found that the Department’s “refusal to adjust the brokerage and handling fees to account for letter of credit fees is not supported by a reasonable reading of the record” and remanded the determination for further explanation or reconsideration.⁹⁴

B. Analysis

In accordance with the Court’s remand order, we have recalculated the B&H SV for Layo Wood to exclude costs associated with a letter of credit, which Layo Wood reported that it did not incur.⁹⁵ In its March 15, 2011, submission, Layo Wood provided an exhibit containing export letter of credit charges from three banks, which Layo Wood then averaged to provide a letter of credit value which it argued should be subtracted from the B&H value.⁹⁶ Layo Wood’s exhibit indicated that the charges Layo Wood included in its calculation were the charges which would be borne by the seller of the merchandise.⁹⁷

It is the Department’s practice, when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available and

⁹² See *Baroque Timber*, Slip Op. 13-96, at 30.

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ While we have made changes to Layo Wood’s B&H SV in conformity with the Court’s remand order, we respectfully disagree with the Court’s finding that the relevant facts of the present case are substantially different from the relevant facts in *Since Hardware (Guangzhou) Co. v. United States*, 911 F. Supp. 2d 1362 (2013) (“*Since Hardware*”), in which the Court affirmed the Department’s refusal to deduct expenses associated with a letter of credit from the B&H SV obtained from Indian data in the World Bank’s *Doing Business Report* because a letter of credit was not included in the list of included documents. We continue to believe that it is inappropriate to deduct from the B&H calculation a charge for obtaining a letter of credit, when a letter of credit does not appear in the list of documents specified as being included in the B&H charges.

⁹⁶ See Submission from Layo Wood, “Multilayered Wood Flooring from the People’s Republic of China: Surrogate Country Selection Comments,” dated March 15, 2011 (751 page submission), at Exhibit 14.

⁹⁷ See *id.*

contemporaneous with the POI.⁹⁸ The Department also relies on the primary surrogate country for all SVs, whenever possible, and resorts to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.⁹⁹ The Court of International Trade has held this preference for valuing FOPs with information from a single surrogate country reasonable because deriving surrogate data from one surrogate country limits the amount of distortion introduced into the calculations.¹⁰⁰

Upon reviewing the letter of credit fee sources submitted by Layo Wood, we find that only two of the three banks are located in the Philippines (*i.e.*, Metro Bank and Land Bank of the Philippines).¹⁰¹ The remaining bank, although named Philippine National Bank, appears from Layo Wood's submission to be located in Singapore.¹⁰² Furthermore, while the fees listed for Metro Bank and Land Bank of the Philippines are denoted in Philippine pesos, the fees for Philippine National Bank are denoted in Singapore dollars.¹⁰³ Due to our preference for obtaining SVs from a single surrogate country, we are declining to factor the letter of credit fees from the Singapore Philippine National Bank into our letter of credit calculation.¹⁰⁴ Therefore, we have derived a letter of credit value based on a simple average of the fees associated with Metro Bank and Land Bank of the Philippines because these SVs are of similar quality. Prior to averaging the values, we converted each from Philippine pesos to U.S. dollars using the average

⁹⁸ See *Certain Artist Canvas* and accompanying Issues and Decision Memorandum, at Comment 2.

⁹⁹ 19 CFR 408(c)(2); see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012) and accompanying Issues and Decision Memorandum, at Comment 2A; *Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) and accompanying Issues and Decision Memorandum, at Comment 1.

¹⁰⁰ See *Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22, at 12-14 (CIT 2013).

¹⁰¹ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Selection Comments," dated March 15, 2011 (751 page submission), at Exhibit 14.

¹⁰² See *id.*

¹⁰³ See *id.*

¹⁰⁴ 19 CFR 408(c)(2).

exchange rate from the POI. The resulting average letter of credit fee value is \$67.38, which we deducted from the total B&H cost from the *Doing Business 2011: Philippines* report.¹⁰⁵

6. Targeted Dumping

A. Background

In the final determination, the Department determined that both Samling and Layo Wood engaged in targeted dumping during the POI and applied the average-to-transaction method when calculating dumping margins. Due to the possibility that changes in SVs could affect the targeted dumping analysis, and to conform to current analysis standards, the Court granted the Department's voluntary remand request to reconsider this issue.

B. Analysis

Based on the changes to the SVs in the final remand redetermination, both Samling and Layo Wood continue to have zero or *de minimis* margins using the average-to-average comparison method.¹⁰⁶ Additionally, although in the *Final Determination* we applied the average-to-transaction comparison method when calculating dumping margins, we have found that, as a result of the SV changes in this remand, applying the average-to-transaction comparison method also results in *de minimis* margins for both respondents. Samling's average-to-average margin is now zero, and its average-to-transaction margin would be 1.12 percent.¹⁰⁷ Layo Wood's average-to-average margin is zero, and its average-to-transaction margin would be 1.71 percent.¹⁰⁸ Because both Samling's and Layo Wood's margins would be zero or *de minimis* using either comparison method, the Department has determined that the average-to-average comparison method accounts for any pattern of prices that differ significantly for each company.

¹⁰⁵ See Layo Wood Final Remand Analysis Memorandum.

¹⁰⁶ See *id.*, at Attachments 3 and 5; see also Samling Final Remand Analysis Memorandum, at Attachments 3 and 5.

¹⁰⁷ See Samling Final Remand Analysis Memorandum, at Attachments 3 and 5.

¹⁰⁸ See Layo Wood Final Remand Analysis Memorandum, at Attachments 3 and 5.

Therefore, the Department has applied the average-to-average comparison method for both Samling and Layo Wood.

7. Separate Rate Companies

In accordance with section 735(c)(5) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weight-averaging the dumping rates of the individually investigated companies. Under section 735(c)(5)(A) of the Act, the “all-others” rate excludes zero and *de minimis* rates and rates based entirely on facts available. Where the rates for the investigated companies are all zero or *de minimis* or based on facts available, section 735(c)(5)(B) of the Act instructs the Department to establish an “all-others” rate using “any reasonable method,” which may include average the dumping margins for individually investigated companies.

Based on changes to the SVs for Layo Wood and Samling, we have revised the rate assigned to the separate rate respondents that are parties to this litigation.¹⁰⁹ Based on the updated SVs, the highest calculated transaction-specific rate on the record is 25.62 percent¹¹⁰ and, as a result, 25.62 percent is now the rate assigned to the PRC-wide entity. As a reasonable method to calculate a new separate rate for the separate rate companies that are parties to this litigation, we have calculated a simple average of the updated 25.62 percent assigned to the PRC-wide entity and the zero percent rates for each of the three mandatory respondents (Layo Wood, Samling, and Zhejiang Yuhua Timber Co., Ltd.). This results in a separate rate of 6.41 percent.

¹⁰⁹ See Layo Wood Final Remand Analysis Memorandum; see also Samling Final Remand Analysis Memorandum.

¹¹⁰ See Samling Final Remand Analysis Memorandum, at Attachment 3.

III. SUMMARY AND ANALYSIS OF LITIGANTS' COMMENTS

We received comments from interested parties regarding Samling's HDF input, Layo Wood's core veneer input, Layo Wood's HDF input, and the separate rate companies' margin calculation. These comments are addressed, below. We received no comments from interested parties regarding Layo Wood's Plywood Input, Layo Wood's Brokerage and Handling, or Targeted Dumping. After considering all parties' comments, we have made no changes to our Draft Redetermination in this final redetermination.

1. Samling's High Density Fiberboard Input

Petitioner argues that it is improper for the Department to change the HTS category with which it valued Samling's HDF input because Samling did not raise any objections to its HDF SV in its case or rebuttal briefs in the investigation. Petitioner states that Samling did not provide any factual or legal basis for the Department to change the HTS classification of its HDF input and argues that the Department was correct in its *Final Determination* to not change the HTS category with which it valued Samling's HDF. In contrast, Petitioner notes that Layo Wood did raise the issue of its HDF valuation in its case brief.

Petitioner argues that the Department was correct to note in its *Final Determination* Issues and Decision Memorandum and in its Draft Redetermination that "when a party claims that a particular SV is not appropriate to value the FOP in question, the Department has determined that the burden is on the party to provide evidence demonstrating the inadequacy of said SV."¹¹¹ Petitioner claims that Samling failed to provide evidence of the proper HTS category with which to value its HDF, and argues that Samling notes in its response to the Department's supplemental remand questionnaire that there is no direct evidence on the record

¹¹¹ See *Final Determination* and accompanying Issues and Decision Memorandum, at 67.

showing that Samling's HDF is "not worked or surface covered."¹¹² Petitioner maintains that there is no evidence on the record to support Samling's contention that the Department should apply to Samling's HDF the same HTS category it applied to Layo Wood's HDF in the *Final Determination*. Petitioner further argues that the Department's reconsideration and valuation of Samling's HDF using HTS category 4411.11 in the Draft Redetermination is unsupported by record evidence.

Samling submitted comments stating that it agreed with the Department's conclusions in the Draft Redetermination regarding Samling.

No other parties commented on this issue.

Department's Position:

We continue to agree with Petitioner that it is the responsibility of the interested parties to create an adequate record with relevant factual information. Nonetheless, in accordance with the Court's remand order, we have now taken the opportunity to reconsider the most appropriate SV for Samling's HDF input, based on the evidence on the record of the investigation. As we explained in section II.2, above, the SV submissions of Layo Wood and Samling contained similar types of factual information about HDF, such as density and thickness, HTS category descriptions, and corresponding SV data.¹¹³ Additionally, concerning Samling's original argument to the Court that the Department accepted new submissions concerning Layo Wood's

¹¹² See Letter from Samling, "Samling Group's Response to Supplemental Remand Questionnaire in the Antidumping Investigation of Multilayered Wood Flooring from the People's Republic of China," dated August 8, 2013.

¹¹³ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Selection Comments," dated March 15, 2011, at Exhibits 5-6; see also Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Layo Comment for Preliminary Determination," dated May 2, 2011; Submission from Samling, "Samling Group Surrogate Value Submission in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China," dated March 15, 2011, at 3 and Exhibit 4; Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Resubmission of July 5, 2011 Surrogate Values for Final Investigation," dated August 3, 2011, at Exhibits 7 and 9.

HDF during verification, without seeking similar information from Samling, our review of the record, including verification exhibits, does not support this contention, as explained in section II.2, above.

We made the determination to change Layo Wood's HDF SV in the *Final Determination* after Layo Wood made the argument in its case brief and after we reviewed the evidence on the record. Specifically, we agreed with Layo Wood's argument in its case brief that an HTS category for HDF that is "not worked or surface covered" was the most accurate SV, based on the Department's verifiers having seen and reviewed Layo Wood's production process during their verification plant tour.¹¹⁴ While Samling did not present a similar argument in its case brief, our review of the record indicates that the same type of evidence upon which we relied to change Layo Wood's HDF SV also exists on the record for Samling: the Department's verification report for Samling indicates that Department officials saw and reviewed Samling's production process during their verification plant tour of Samling's manufacturing facilities.¹¹⁵ We relied on Layo Wood's verification plant tour as sufficient evidence to change Layo Wood's HDF SV in the *Final Determination*, and in order to treat both respondents equally, we now find that it is appropriate to rely on equivalent evidence to change Samling's HDF SV, from HTS category 4411.19 to HTS category 4411.11, as well.¹¹⁶

2. Layo Wood's Core Veneer Input

Petitioner contends that the same arguments from the investigation are applicable in this remand to support using the non-coniferous, non-tropical core veneer ("core veneer") used in the

¹¹⁴ See Memorandum to the File, "Verification of the Sales and Factors Response of Zhejiang Layo Wood Industry Co., Ltd., in the Less than Fair Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 12-13.

¹¹⁵ See Memorandum to the File from Brandon Petelin, International Trade Analyst, and Drew Jackson, Senior International Trade Analyst, "Verification of Sales and Factors Response of Riverside Plywood Corporation and Samling Riverside Co., Ltd. in the Less-than-Fair-Value Investigation of Multilayered Wood Flooring from the People's Republic of China," dated July 22, 2011, at 9.

¹¹⁶ See Samling Final Remand Analysis Memorandum.

Final Determination: the SV data used in the final determination for Layo Wood's core veneer are contemporaneous, reliable, from an official Philippine government source, and are reported on the same basis on which Layo Wood reported its FOP. In contrast, Petitioner argues that the core veneer SV the Department used in the draft redetermination is not contemporaneous and is from unofficial subcategories, according to the Department's brief before the court.¹¹⁷

Additionally, Petitioner maintains that the Department did not explain in the draft redetermination how these unofficial statistics are transformed into statistics that can be used in the remand redetermination.

Petitioner also alleges that the Department selected the 2009 core veneer SV data as a means of deriving a lower SV for core veneer than the SV for face veneers. Petitioner claims that this creates a contextual relationship between the two SVs. Petitioner now argues that during the investigation, it contended that the face veneer SV was too low compared to the core veneer SV. With the Department's use of a core veneer SV that is now even lower than in the investigation, Petitioner contends that the Department must again reexamine the face veneer SVs because of its contextual relationship with value of the core veneer SV.

Department's Position:

For the final redetermination, the Department continues to find that the 2009 SV data as reported by GTA for HTS 4408.9090.06 from the Philippines, which is the HTS category for sheets for plywood, is the most specific HTS category to Layo Wood's input. For the reasons stated in the draft redetermination, as explained in section II.3, above, this is the best SV data on the record to value Layo Wood's core veneer.

¹¹⁷ See Defendant's Response to Plaintiffs' Consolidated Motion for Judgment Upon the Administrative Record, (before the U.S. Court of International Trade, Consol. Court No. 12-00007)(February 4, 2012), at 13.

With respect to Petitioner's argument that the 2009 GTA data do not represent official Philippine government data, we disagree. First, the 2009 GTA core veneer SV data are from the same source as the Philippine NSO data; hence, the GTA data are obtained from official Philippine government import statistic data.¹¹⁸ Second, during the investigation, the Philippine NSO data provided by the Philippine government and placed on the record by the Department is at the 8-digit level and not at the 10-digit level. After a thorough examination of the core veneer SVs on the record, we selected the 2009 GTA core veneer SV data, which was from the same Philippine NSO data source as the Department placed on the record and are certainly usable import data for valuing Layo Wood's core veneer.

Next, Petitioner's argument that the Department considered the core veneer SV relative to the face veneer SV when selecting the best core veneer SV is misplaced. When selecting the core veneer SV, the Department did not consider the core veneer SV relative to the face veneer SV. Rather, the Department determined the best available SV information on the record and the most specific SV for valuing core veneer. Further, because the court referenced the relative SVs of the core veneer and face veneer, the Department merely addressed the court's statement by noting in the draft redetermination that the value of the core veneer SV was now lower than the value of the face veneer SV. Because Layo Wood's face veneer SV was not remanded for reconsideration, the Department is not addressing Petitioner's requests that the Department reconsider the face veneer SV.

¹¹⁸ See Memorandum to the File from Brandon Farlander, International Trade Compliance Analyst, Office 4, AD/CVD Operations, "Surrogate Value Memorandum," dated May 19, 2011, at 2 and Exhibit 1 (The NSO is the primary statistical agency of the Philippine government and the NSO import statistics are compiled from copies of import documents submitted by importers or their authorized representatives to the Bureau of Customs. These statistics are published in annual volumes by the Foreign Trade Statistics Section of the NSO and are available in electronic versions by request).

3. Layo Wood's High Density Fiberboard Input

Layo Wood contends that, when the Department provided additional explanation in its Draft Redetermination concerning its original determination of Layo Wood's HDF SV, without making any of the adjustments requested by Layo Wood, the Department disregarded the Court's findings and failed to calculate Layo Wood's SV using the "best available information." Layo Wood states that the Court found the Department's method of valuing Layo Wood's HDF input by averaging two different HDF categories appeared unreasonable and required more explanation.¹¹⁹

Layo Wood originally argued to the Court that its HDF should be valued based solely on the HTS category within which the average of its HDF density range (*i.e.*, 820 kg per cubic meter) would be classified (*i.e.*, HTS category 4411.11), rather than based on a combination of the two HTS categories that account for the full range of Layo Wood's HDF densities (*i.e.*, HTS categories 4411.11 and 4411.21). Layo Wood now argues that when the Department converted Layo Wood's HDF SV from kg to cubic meters using the average of the HDF density range reported by Layo Wood, this action was inconsistent with the Court's ruling regarding valuation of Layo Wood's HDF with a single HTS category. Layo Wood suggests that, in the absence of record evidence regarding the actual percentages of Layo Wood's HDF that would be classified in each HTS category, the neutral assumption that must be drawn is that 50 percent of Layo Wood's HDF is of a density covered by HTS category 4411.11, and 50 percent is of a density covered by HTS category 4411.21.

Layo Wood continues to argue that the Department should separately convert the values of each HTS category from kg to cubic meters before averaging them into a single AUV.

¹¹⁹ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Remand Results; Consol. Ct. No. 12-00007 Baroque Timber, et al. v. United States," dated October 29, 2013, at 2.

Specifically, Layo Wood contends that the Department should use a density of 650 kg per cubic meter to convert the value of HTS category 4411.21 (which is the mid-point of the density range covered by the HTS description), and a value of 820 kg per cubic meter to convert the value of HTS category 4411.11 (which is the mid-point of the entire range of HDF densities that Layo Wood reported using).

Layo Wood notes that the Department converted the value of Samling's HDF from kg to cubic meters using the mid-point of the HDF density range proposed by Petitioner, and argues that it is not reasonable for the Department to use a different approach when converting the value for Layo Wood's HDF. Layo Wood also points out the differing SVs assigned to the HDF inputs of Samling and Layo Wood, alleging that the different values demonstrate the unreasonableness of the Department's approach of valuing Layo Wood's HDF.

No other parties commented on this issue.

Department's Position:

As an initial matter, we disagree with Layo Wood's assertion that the Department disregarded the Court's findings when we provided further explanation of our *Final Determination* in our Draft Redetermination and declined to make the changes advocated by Layo Wood. The Court's remand order stated that the Department did not provide an explanation for its decision to convert the average HTS value by the average density of Layo Wood's HDF input, and stated that "{w}ithout an explanation of its decision, the court cannot affirm Commerce's determination."¹²⁰ The Court remanded the SV of Layo Wood's HDF input "for further explanation or reconsideration,"¹²¹ and we chose to provide the Court with further explanation of the reasoning behind our HDF SV calculation in the *Final Determination*.

¹²⁰ See *Baroque Timber*, Slip Op. 13-96, at 27-28.

¹²¹ See *id.*

First, we disagree that converting Layo Wood's HDF SV from kg to cubic meters using the average of Layo Wood's reported HDF density range is inconsistent with the Court's ruling on the valuation of HDF with two HTS categories. The Court stated that it was reasonable to value Layo Wood's HDF with both HTS category 4411.11 and category 4411.21, in order to capture the full range of HDF densities used by Layo Wood.¹²² We found that the most accurate way to account for Layo Wood's full range of HDF densities, as explained in section II.4, above, was to calculate a simple average of the AUVs reported within HTS categories 4411.11 and 4411.21. Similarly, in order to convert the averaged AUV from kg to cubic meters, we applied a conversion factor that also captures the full range of HDF densities used by Layo Wood.¹²³ Furthermore, we disagree with Layo Wood's assertion that we must assume certain percentages of Layo Wood's HDF would be classified under HTS category 4411.11 and HTS category 4411.21, respectively. Layo Wood provided no information concerning the percentages of its HDF covered by each HTS category.¹²⁴ As a result, we continue to find that using the method explained in the Draft Redetermination, *i.e.*, averaging the AUVs of HTS categories 4411.11 and 4411.21, converting the averaged AUV from kg to cubic meters, and applying it to the entire HDF FOP reported by Layo Wood, is more accurate than making assumptions about the percentage of HDF with each particular density that was consumed by Layo Wood. Furthermore, as explained in section II.4, above, first averaging the AUVs of HTS categories 4411.11 and 4411.21, and then converting the averaged AUV from kg to cubic meters, is the most reasonable calculation method for Layo Wood's HDF because it reflects the way Layo Wood reported its HDF in its FOP database (*i.e.*, as one HDF input covered by two HTS

¹²² See *id.*, at 25-26.

¹²³ We calculated a conversion factor of 820 kg per cubic meter, which is the average of 760-880 kg per cubic meter, the density range reported by Layo Wood.

¹²⁴ See *Final Determination* and accompanying Issues and Decision Memorandum, at Comment 20; see also *Baroque Timber*, Slip Op. 13-96, at 25.

categories, rather than two HDF inputs, each covered by a single HTS category¹²⁵). This calculation method allows the Department to follow its approach of first determining the most accurate, product-specific SV, and then applying any necessary unit conversion factors. Therefore, for the reasons stated in section II.4, above, we continue to disagree with Layo Wood that we should separately convert the values of each HTS category from kg to cubic meters before averaging them into a single AUV.

Second, we disagree with Layo Wood's claim that the Department's method of calculating Layo Wood's HDF SV is unreasonable compared to the method it used to calculate Samling's HDF SV. We note that, while Layo Wood consumed HDF with a range of densities extending to two different HDF categories (*i.e.*, HTS categories 4411.11 and 4411.21),¹²⁶ Samling consumed HDF with densities classified within a single HTS category (*i.e.*, 4411.11).¹²⁷ Because Layo Wood and Samling reported different HDF inputs, it would not have been accurate or reasonable for the Department to treat those inputs as being identical; however, after selecting appropriate HTS categories for each respondent's input, we used the same method to calculate both Samling's and Layo Wood's HDF SVs. Specifically, after first obtaining an AUV from an HTS category or categories that best matched the density of each respondent's HDF input, we applied a conversion factor that also matched the density of each respondent's HDF input. For Samling, after finding that its HDF was classified under HTS category 4411.11, we

¹²⁵ See Memorandum to the File from Erin Kearney, International Trade Analyst, AD/CVD Operations, Office 4, Import Administration, "Amended Final Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd.," dated November 7, 2011, at Attachment 2.

¹²⁶ See Memorandum to the File from Erin Kearney, International Trade Analyst, AD/CVD Operations, Office 4, Import Administration, "Amended Final Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd.," dated November 7, 2011, at Attachment 2; *see also* Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 8, 2011, at 54.

¹²⁷ See Submission from Samling, "Samling Group Surrogate Value Submission in the Antidumping Duty Investigation of Multilayered Wood Flooring from the People's Republic of China," dated March 15, 2011, at 3; *see also* section II.2, above.

converted the AUV from kg to cubic meters using the mid-point of the HDF density range proposed by Petitioner (*i.e.*, 830 to 850 kg per cubic meter).¹²⁸ Petitioner's proposed density range is consistent with the description of the HTS category used to value Samling's HDF (*i.e.*, 4411.11).¹²⁹ Therefore, we found that this was the best information on the record with regard to Samling's HDF. Likewise, for Layo Wood, after finding that its HDF density range was classified under HTS categories 4411.11 and 4411.21, we converted the averaged AUV from those categories from kg to cubic meters using the mid-point of the HDF density range reported by Layo Wood (*i.e.*, 760 to 880 kg per cubic meter).¹³⁰ Because Layo Wood's HDF density range is consistent with the density ranges of the two HTS categories averaged to value Layo Wood's HDF (*i.e.*, 4411.11 and 4411.21),¹³¹ and because the conversion factor reflects the density of the input actually used by Layo Wood, we found that this was the best information on the record with regard to Layo Wood's HDF.

Layo Wood also points to the different SVs assigned to the HDF of Samling and Layo Wood in an attempt to show that the Department's valuation of Layo Wood's HDF was unreasonable. However, we again note that Samling and Layo Wood reported different HDF inputs. Samling reported HDF classified only under HTS category 4411.11, while Layo Wood reported HDF with densities classified under HTS categories 4411.11 and 4411.21. Because the value of similar products can vary between HTS categories, it is inaccurate to compare the AUV resulting from a single HTS category with the AUV resulting from the average of two HTS categories. As a result, we find that the difference in the AUV assigned to Samling's HDF,

¹²⁸ See Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China," regarding surrogate country and surrogate value comments, dated March 15, 2011, at Exhibit 13.

¹²⁹ HTS category 4411.11 applies to "fiberboard greater than 0.8 G/Cm³, not worked or surface covered."

¹³⁰ See Submission from Layo Wood, "Multilayered Wood Flooring from the People's Republic of China: Supplemental Section D Questionnaire Response," dated April 8, 2011, at 54.

¹³¹ HTS category 4411.11 applies to "fiberboard greater than 0.8 G/Cm³, not worked or surface covered," and HTS category 4411.21 applies to "fiberboard greater than 0.5 G/Cm³ and less than or equal to 0.8 G/Cm³, not worked or surface covered."

which was based on one HTS category, compared to the AUV assigned to Layo Wood's HDF, which was based on the average of two HTS categories, does not demonstrate unreasonableness in the Department's Draft Redetermination. Therefore, for the final redetermination, we have continued to use our methodology from the Draft Redetermination to calculate Layo Wood's HDF SV.¹³²

4. Separate Rate Companies

Separate rate respondent Armstrong and Lumber Liquidators' Arguments:

Armstrong and Lumber Liquidators argue that using the China-wide rate of 25.62 percent, which is an adverse rate, in calculating the rate for the non-selected respondents (separate rate companies) is inconsistent with Section 735(c)(5) of the Act (*i.e.*, the all others rate provision).¹³³ They argue that it is inconsistent with the statute because the Department made no finding of non-cooperation by the separate rate companies. Although the statute contemplates the inclusion of the adverse facts available ("AFA") rate in the calculation of the all-others rate, the inclusion of the AFA rate is not always reasonable and here it has yielded an unreasonable result. In applying Section 735(c)(5) of the Act to non-market economy cases, Armstrong and Lumber Liquidators contend that the CIT and the Department have held consistently and correctly that the Department cannot include the PRC-wide rate in the rate applicable to non-selected companies qualifying for a separate rate.¹³⁴ In *Bestpak*,¹³⁵ the Federal Circuit held that the separate rate calculated by the Department was unreasonable and that a review of the administrative record reveals a lack of substantial evidence showing that such a determination reflects economic reality.

¹³² See Layo Wood Final Remand Analysis Memorandum.

¹³³ See Submission from Lumber Liquidators and Armstrong Wood, "Draft Redetermination Comments: Multilayered Wood Flooring from the People's Republic of China," dated October 29, 2013, at 2-6.

¹³⁴ See *Yantai Oriental Juice Co. v. United States*, 27 CIT 477 (2003) ("*Yantai Oriental*").

¹³⁵ See *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013) ("*Bestpak*").

Armstrong and Lumber Liquidators also state that it is generally agreed that the experience of the mandatory respondents is presumed to be representative of the experience of all separate rate respondents.¹³⁶ Consequently, an average of the mandatory respondents' rates is relevant to the determination of a reasonable rate for the separate rate respondents, particularly when the mandatories are found not to be dumping.¹³⁷ Under its reasonable method standard,¹³⁸ the Department has assigned *de minimis* rates to uninvestigated companies.¹³⁹ Based on record evidence, assigning the separate rate companies a zero in this instant case is a commercially realistic antidumping rate.

Separate rate respondents Hawd Flooring; Jisen Wood; Dexin Wood; Yingyi-Nature; and Karly Wood's Arguments:

Hawd Flooring, Jisen Wood, Dexin Wood, Yingyi-Nature, and Karly Wood contend that if the Department continues to assign *de minimis* margins to the mandatory respondents in the remand redetermination, the Department should also assign *de minimis* rates to the separate rate respondents.¹⁴⁰ They claim it was unreasonable and contrary to law to include the PRC-entity rate when calculating the separate rate because the separate rate respondents fully cooperated in this investigation. The facts available margin used in the separate rate calculation contradicts the

¹³⁶ See Submission from Lumber Liquidators and Armstrong Wood, "Draft Redetermination Comments: Multilayered Wood Flooring from the People's Republic of China," dated October 29, 2013, at 8.

¹³⁷ See *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1380 (CIT 2009) ("*Amanda 2009*"); see also *Amanda Foods (Vietnam) Ltd. v. United States*, 714 F. Supp. 2d 1282 (CIT 2010) ("*Amanda 2010*"); *Amanda Foods (Vietnam) Ltd. v. United States*, 2011 CIT LEXIS 37 (CIT 2011) ("*Amanda 2011*"), at 12.

¹³⁸ See Section 735(c)(5)(B) of the Act.

¹³⁹ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 56211 (September 12, 2013) and accompanying Issues and Decision Memorandum ("*Shrimp from Vietnam*"), at comment 9; see also *Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review*, 73 FR 32,678 (June 10, 2008) ("*Brake Rotors from China*"); *Honey from Argentina: Final Results of Antidumping Administrative Review and Determination Not to Revoke in Part*, 73 FR 24,220 (May 2, 2008) ("*Honey from Argentina*").

¹⁴⁰ See Submission from Hawd Flooring, Jisen Wood, Dexin Wood, Yingyi-Nature Wood, and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Remand Results; Consol. Ct. No. 12-00007 Baroque Timber, et al. v. United States," dated October 29, 2013, at 4.

statute's expected reasonable method because the facts available rate was not assigned to an individually reviewed respondent, rather it was assigned to the PRC-wide entity.¹⁴¹ Also, these separate rate respondents note that the Statement of Administrative Action ("SAA") only suggests averaging in a facts available rate if volume data are available, such that a weighted-average margin may be determined.¹⁴² However, such data are not available in this investigation.¹⁴³

These companies argue that in *Bestpak*, the court "rejected the use of an AFA rate derived from a cooperating *de minimis* respondent as part of the calculation of the separate rate."¹⁴⁴ The *Bestpak* court determined that basing an AFA rate on a single, high-margin transaction from a cooperating respondent was not representative of the separate rate respondent's trading activity.¹⁴⁵ They also argue that the all others rate in the draft remand is not representative of the separate rate companies' trading activity and is not based on substantial evidence. Therefore, it is not reasonable that the cost and sales practices of a state-controlled entity be attributed to a private company's potential dumping margins.¹⁴⁶

The above respondents cited to *Amanda 2011* to argue that as any reasonable method the Department should calculate a *de minimis* rate for the separate rate companies based on the mandatory respondents' rates in the final redetermination.¹⁴⁷

¹⁴¹ See Section 735(c)(5)(B) of the Act.

¹⁴² See Submission from Hawd Flooring, Jisen Wood, Dexin Wood, Yingyi-Nature Wood, and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Remand Results; Consol. Ct. No. 12-00007 Baroque Timber, et al. v. United States," dated October 29, 2013, at 7.

¹⁴³ See SAA, at 873.

¹⁴⁴ See Submission from Hawd Flooring, Jisen Wood, Dexin Wood, Yingyi-Nature Wood, and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Remand Results; Consol. Ct. No. 12-00007 Baroque Timber, et al. v. United States," dated October 29, 2013, at 9.

¹⁴⁵ See *id.*

¹⁴⁶ See *id.*

¹⁴⁷ See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Review*, 78 FR 42930 (July 18, 2013) ("*Diamond Sawblades from China*").

These companies contend that the Department must explain how any separate rate chosen from the three *de minimis* respondents is representative of potential dumping margins of the separate rate respondents after examining all record evidence.¹⁴⁸ Also, they contend that to be representative, the separate rate calculation must be based upon record evidence pertaining to the cooperating mandatory respondents' rate, such as the mid-point weighted-average *de minimis* margins (based on control number ("CONNUM")).¹⁴⁹

These companies argue that the Department implied, in its draft redetermination, that the non-cooperating, non-participating PRC-wide entity was "individually investigated" under the statute, whereas dozens of cooperating separate rate companies who submitted significant information could not have been "individually investigated" because their existence was not taken into account in the separate rate calculation.¹⁵⁰ The parties contend that if the Department continues to include the PRC entity rate as part of the separate rate calculation, then the Department should adjust its calculation to include the actual weighted-average rate of each respondent, including negative rates, and divide these four rates by four plus the number of all individual separate rate companies who earned a separate rate in the final determination.¹⁵¹

Finally, these companies state that the separate rate respondents' rights were compromised because of the insufficient amount of time they had to comment on the draft redetermination.¹⁵²

¹⁴⁸ See Submission from Hawd Flooring, Jisen Wood, Dexin Wood, Yingyi-Nature Wood, and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Remand Results; Consol. Ct. No. 12-00007 Baroque Timber, et al. v. United States," dated October 29, 2013, at 10.

¹⁴⁹ See *id.*

¹⁵⁰ See *id.*, at 15.

¹⁵¹ See *id.*, at 15-16.

¹⁵² See *id.*, at 16.

Separate rate respondent Fine Furniture's Arguments:

Fine Furniture argues that, unlike in *Bestpak*, the Department has facts on this record to establish that Fine Furniture's "commercial reality" is similar to that of the mandatory respondents, rather than the PRC entity.¹⁵³ For example, Fine Furniture submitted Sections A, C and D questionnaire responses and surrogate value data.¹⁵⁴ Fine Furniture contends that based upon its sales and factors of production ("FOPs") data, it should receive a calculated zero rate. It claims the Department should consider this record evidence when determining what rate to assign to Fine Furniture. In addition, Fine Furniture contends that the CONNUM-specific transaction that forms the basis for the PRC-wide entity rate bears little relation to Fine Furniture's commercial reality and its sales of subject merchandise.¹⁵⁵

Further, Fine Furniture maintains that it was fully cooperative and should not be subject to a partial separate rate that includes an AFA rate that does not reflect commercial reality.¹⁵⁶ Furthermore, Fine Furniture contends that the goal of ensuring that a non-cooperative party does not receive a more favorable result through noncooperation makes no sense if the Department is permitted to apply AFA to a cooperating party.¹⁵⁷

Finally, Fine Furniture states that the Department and courts have regularly recognized that mandatory respondents are representative of the entire industry¹⁵⁸ and their rates should be the sole basis of the separate rate.¹⁵⁹ Therefore, Fine Furniture argues that the Department

¹⁵³ See Submission from Fine Furniture, "Multilayered Wood Flooring from the People's Republic of China: Comments of Fine Furniture (Shanghai) Limited on Draft Results of Redetermination Pursuant to Court Order (Consol. Ct. No. 12-00007, Slip Op. 13-96 (CIT 2013))," dated October 29, 2013, at 4.

¹⁵⁴ See *id.*, at 10.

¹⁵⁵ See *id.*, at 9-11.

¹⁵⁶ See *id.*, at 12.

¹⁵⁷ See *id.*, at 15.

¹⁵⁸ See *Amanda 2009*.

¹⁵⁹ See Submission from Fine Furniture, "Multilayered Wood Flooring from the People's Republic of China: Comments of Fine Furniture (Shanghai) Limited on Draft Results of Redetermination Pursuant to Court Order (Consol. Ct. No. 12-00007, Slip Op. 13-96 (CIT 2013))," dated October 29, 2013, at 16.

should recalculate the separate rate applicable to the separate rate companies, or at least to Fine Furniture, as a zero rate and exclude Fine Furniture from the antidumping order.¹⁶⁰

Petitioner's Arguments:

Petitioner argues that the Department's methodology of calculating the separate rates was consistent with the statute and *Bestpak*.¹⁶¹ In *Bestpak*, the court held that section 735(c)(5)(B) of the Act and the SAA explicitly allow the Department to factor both *de minimis* and AFA rates into the calculation methodology.¹⁶² However, the circumstances of *Bestpak* rendered a simple average of a *de minimis* and AFA PRC-wide rate unreasonable under the circumstances.¹⁶³ In the investigation underlying *Bestpak*,¹⁶⁴ the AFA rate was based on the petition and not an actual commercial transaction. In the instant case, the PRC-wide rate was an actual commercial transaction (the highest transaction-specific margin calculated for a mandatory respondent, 25.62 percent).¹⁶⁵ And, as the Department stated in *Plywood from China*, the rate is reasonable because it is based on an actual transaction from a cooperating respondent that sold subject merchandise during the POI.¹⁶⁶ This rate is supported by substantial evidence, according to Petitioner, because it is based upon sales from the POI, and the Department may reasonably determine that a non-responsive, or uncooperative, respondent could have made all of its sales at the same rate.¹⁶⁷

¹⁶⁰ See *id.*, at 16-18.

¹⁶¹ See Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order," dated October 29, 2013, at 7-8.

¹⁶² See *id.*

¹⁶³ See *id.*, at 8-9.

¹⁶⁴ See *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808, 41811 (July 19, 2010).

¹⁶⁵ See Submission from Petitioner, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order," dated October 29, 2013, at 9.

¹⁶⁶ See *id.*

¹⁶⁷ See *Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013) ("*Plywood from China*") and accompanying Decision Memorandum, at 21.

In addition, Petitioner notes that there are a significant number of non-responding companies that were assigned the AFA rate, and these companies account for an unknown volume of subject imports during the POI.¹⁶⁸ Basing the rate of the separate rate companies on only the *de minimis* rates calculated for the mandatory respondents would ignore the fact that there are a large number of non-cooperating companies of indeterminate size which, under the law, are presumed to have dumped subject merchandise in the United States.¹⁶⁹ In a recent *Lined Paper from India* review, the Department stated that it could not reasonably conclude that the zero rates determined for the two mandatory respondents should be the sole basis for determining a rate for non-selected companies that received and responded to the quantity and value (“Q&V”) questionnaires from the Department because the Department was obligated to conduct its respondent selection analysis based on an incomplete universe of potential respondents.¹⁷⁰ Similarly, in the instant case, there were a number of companies that did not provide Q&V data and were assigned the AFA rate, and these companies account for an unknown volume of subject imports.¹⁷¹ The underlying purpose of AFA, according to Petitioner, is to ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.¹⁷² Hence, including the 25.62 percent rate in the calculation of the rate for the separate rate respondents is proper and results in a reasonable result.¹⁷³

¹⁶⁸ See Submission from Petitioner, “Multilayered Wood Flooring from the People’s Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order,” dated October 29, 2013, at 11.

¹⁶⁹ See *id.*

¹⁷⁰ See *Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 22232 (April 15, 2013) (“*Lined Paper from India*”) and accompanying Issues and Decision Memorandum, at Comment 5.

¹⁷¹ See Submission from Petitioner, “Multilayered Wood Flooring from the People’s Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order,” dated October 29, 2013, at 11.

¹⁷² See *id.*, at 11-12.

¹⁷³ See *id.*, at 12.

Department's Position:

We disagree with the respondents that the separate rate calculation in the draft redetermination was unlawful and/or unreasonable, and we continue to apply that rate in the final redetermination. Generally, when calculating a margin for the separate rate respondents, the Department has looked to the all others provision, section 735(c)(5) of the Act, for guidance. Section 735(c)(5)(A) of the Act provides that when calculating the all-others margin, the Department will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero or *de minimis*, or based entirely on facts available, the Department may use “any reasonable method” for assigning a margin to non-selected respondents, “including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

In this investigation, we have calculated weighted-average dumping margins of zero for the mandatory respondents.¹⁷⁴ We are also applying AFA to the PRC-wide entity which includes those companies that failed to respond to our requests for Q&V data information.¹⁷⁵ In accordance with section 735(c)(5)(B) of the Act, as “any reasonable method,” for the final redetermination, we continue to calculate the separate rate margin as a simple average of the three zero-percent mandatory respondent margins and the PRC-wide entity margin.¹⁷⁶ The PRC-wide entity margin, which is 25.62 percent, was the highest transaction-specific rate for a mandatory respondent in the draft redetermination.¹⁷⁷ Therefore, the margin for the separate rate respondents which are party to this litigation continues to be 6.41 percent. The Department finds

¹⁷⁴ See *Draft Redetermination*.

¹⁷⁵ See *Final Determination* at 64322.

¹⁷⁶ See *Draft Redetermination*.

¹⁷⁷ We note that because the 25.62 percent rate is a transaction-specific margin it is not secondary information and need not be corroborated. See Section 776(c) of the Act.

that this is a “reasonable method” of taking into account the administrative record, in its entirety, and includes both the margins calculated for cooperating mandatory respondents and the PRC entity margin, which encompasses a number of companies that failed to cooperate and whose Q&V information remains unknown.

In determining the rate to assign to the separate rate applicants, we must account for the fact that the Department issued Q&V questionnaires in this investigation to a number of companies which failed to respond. All of these companies were found to be part of the PRC-wide entity. For that reason, we were unable to conduct respondent selection based on responses to all of the Q&V questionnaires issued with an understanding of the full universe of exporters and producers of subject merchandise. The Department chose the three largest exporters to investigate based on that incomplete universe of information. The fact that other companies that failed to respond *may* have been selected as one of the three largest companies in the investigation is relevant to the Department’s analysis of the separate rate companies. When companies refuse to provide Q&V data, we cannot conclude that the zero-percent rates determined in the instant investigation for the three mandatory respondents alone serve as a proper basis for determining a rate for the separate rate companies. This added element of a failure to cooperate by a number of companies, the size, quantity, and value information of which remains unknown, supports the Department’s decision to factor the PRC-entity rate into the separate rate calculation.¹⁷⁸

The parties argue that the SAA’s “expected” methodology for non-selected companies is to average the individually investigated companies’ rates and in this case only the companies

¹⁷⁸ See *Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2010-11*, 78 FR 22232 (April 15, 2013), and accompanying Issues and Decision Memorandum, at comment 5 (Similarly explaining that the Department was “precluded from conducting its respondent selection analysis based on responses to all of the Q&V questionnaires issued” such that it was reasonable to average the two mandatory *de minimis* rates with two of the adverse facts available rates to calculate a separate rate).

with zeros were individually investigated; thus, the Department should simply average the zeros. This is a mischaracterization of the expected methodology. The SAA's "expected" methodology is to weight-average the zero and *de minimis* margins and margins determined based on facts available and this is simply not possible based on the facts of this investigation.¹⁷⁹

Assuming *arguendo* that the PRC entity is not individually investigated, as some of the separate rate companies have argued, then the Department could not apply the expected methodology in this investigation because we would have only the zero margins calculated for the mandatory respondents, not zero *and* total AFA margins. In addition, the SAA's expected methodology is to weight-average the zero and AFA margins. Here, assuming the PRC-wide entity is individually examined, there is no way for the Department to weight-average its margin with the zero margins because, due to the lack of cooperation of the companies included within the PRC-entity, there is no way to determine the PRC-entity's total exports during the POI. Indeed, the SAA explicitly recognizes the importance of volume data to the expected methodology.¹⁸⁰ Thus, regardless of whether the PRC-wide entity is individually examined, there is no way for the Department to apply the SAA's expected methodology in this case.

The Department also disagrees with the separate rate companies that this final redetermination runs afoul of the Federal Circuit's decision in *Bestpak*. In *Bestpak*, the Federal Circuit upheld the Department's simple-average, separate rate calculation methodology as lawful, but determined that the result in that particular case was unreasonable and unsupported by the record.¹⁸¹ The court ruled that Bestpak's 123.83 percent separate rate was unreasonable

¹⁷⁹ See SAA, at 873.

¹⁸⁰ See *id.* (noting that the expected methodology is dependent on the provision of volume data).

¹⁸¹ *Bestpak*, 716 F.3d at 1377-79 (finding that the Department was permitted to use a simple average methodology but the facts of the case rendered such an average unreasonable as applied).

because the record lacked substantial evidence showing that the resulting determination reflected economic reality.¹⁸²

The record and the facts in this investigation are distinguishable from *Bestpak*. First, when holding Commerce's final determination unreasonable and unsupported by the record, in *Bestpak* the court noted that "Commerce ultimately assigned Bestpak a margin that was exactly half of the China-wide rate – a rate for those presumed to be under foreign government control."¹⁸³ The 247.65 percent entity rate in *Bestpak* was based upon a petition rate. In contrast to the facts presented in *Bestpak*, the 25.62 percent PRC-wide entity rate in this case is the highest transaction-specific margin calculated for a mandatory respondent. Unlike a petition rate, it is not secondary information, but is information gathered from a participating party during the course of the investigation and reflects actual economic activity.¹⁸⁴ Additionally, in contrast to *Bestpak*, the separate rate is one fourth of the rate assigned to the PRC-wide entity. For all these reasons, the Department believes that the separate rate in this investigation better reflects economic reality.

Second, in determining whether the Department's determination was based upon substantial evidence, the court found the administrative record "thin" because the Department examined only two respondents.¹⁸⁵ In contrast, the Department examined three mandatory respondents in this case and based the entity rate on the failure of a number of companies to respond to Q&V questionnaires.¹⁸⁶ Thus, the record in this case contains more than in *Bestpak*

¹⁸² *Id.* at 1378.

¹⁸³ *Id.* at 1379.

¹⁸⁴ See the SAA at 870 (explaining that "secondary information" includes, *inter alia*, information from an antidumping petition).

¹⁸⁵ *Bestpak*, 716 F.3d at 1379.

¹⁸⁶ See *Preliminary Determination* at 30661.

and here, the Department examined three mandatory companies and their zero margins are each taken into account in the separate rate calculation.

Fine Furniture argues that the Department should calculate a zero rate for Fine Furniture in the final redetermination based on the data it provided on the record. Because of the large number of possible respondents, the Department could not select every company for investigation, and, instead, limited the companies under examination. Under these circumstances, a separate rate company's margin cannot be based on an analysis of its own sales and FOP data because the Department does not have the resources to gather and analyze all the necessary information for the separate rate companies. To calculate an accurate margin, the Department needs to analyze fully a company's responses which normally requires a number of supplemental questionnaires and responses. Although Fine Furniture requested to be treated as a voluntary respondent and timely submitted questionnaire responses (Sections A, C, and D), the Department did not accept Fine Furniture as a voluntary respondent. Thus, we did not analyze or verify Fine Furniture's questionnaire responses, nor did we issue any supplemental questionnaires. As such, in this case there is insufficient record evidence to determine that Fine Furniture, or any other separate rate company, was not dumping during the POI such that the Department should assign the company a zero margin. Instead, the Department has calculated their margin under the all others provision provided for in section 735(c)(5) of the Act.

As explained above, we have relied upon "any reasonable method" in this case to calculate a separate rate. This rate takes into account the record in its entirety, which reflects the fact that three selected mandatory respondents cooperated and received zero margins, and the fact that other companies failed to respond to the Department's Q&V questionnaires and were placed in the PRC-wide entity which has been assigned a dumping margin of 25.62 percent.

The parties cite a number of cases to support their contention that the Department's calculation of the separate rate in this redetermination is unreasonable. For example, one group of respondents cite to *Yantai Oriental*, *Shrimp from Vietnam*, *Honey from Argentina*, *Brake Rotors from China* and *Diamond Sawblades from China*, to argue that the Department has averaged the zeros calculated for mandatory respondents to assign a *de minimis* rate to the non-selected respondents. The parties argue that if the Department did such a calculation in those cases, then it should also do so here. In response, we note that in each proceeding the Department analyzes the administrative record to reach a reasonable decision based upon the evidence. Although the Department determined in those cases, based upon their respective records, that a particular approach was "reasonable," it does not mean that the same conclusion must be reached in every case. Although respondents argue that in *Yantai Oriental*, the court rejected averaging a PRC-wide entity margin with the mandatory respondents' zero-percent margins, in 2013, the court in *Bestpak* specifically affirmed this methodology as long as it yielded a reasonable result. We note that *Shrimp from Vietnam*, *Diamond Sawblades from China*, *Honey from Argentina*, and *Brake Rotors from China* are distinguished from the present case because they were reviews, rather than investigations. In *Brake Rotors from China*, the Department assigned zero margins to the separate rate respondents due, in part, to the extensive history of zero or *de minimis* margins in prior proceedings.¹⁸⁷ However, the instant case is an investigation so no history of margins exists. *Shrimp from Vietnam* and *Diamond Sawblades from China* are further distinguished from the instant case because in those cases the Department did not issue Q&V questionnaires.

Certain parties also argue that pursuant to *Amanda 2009*, *Amanda 2010*, and *Amanda 2011*, the Department is not precluded from assigning as a separate rate the average of the

¹⁸⁷ See *Brake Rotors from China* and accompanying Issues and Decision Memorandum, at comment 1.

“individually investigated” respondents that received a *de minimis* rate. The parties claim the individually investigated respondents are presumed to be representative of the respondents as a whole so that an average of the individually investigated respondents’ rates may be relevant to the determination of the separate rate. However, as explained above, based upon the facts of this investigation, the Department does not agree that such a result is mandated by the statute or the SAA. We note, as above, that *Amanda 2009*, *Amanda 2010*, and *Amanda 2011* are distinguished from the present case because they were all reviews, rather than an investigation, like the instant case.

In conclusion, we find our calculation methodology and the assignment of the 6.41 percent rate to the separate rate respondents to be reasonable pursuant to the statute and supported by the record evidence. The record evidence demonstrates that the 25.62 percent PRC-wide entity rate is an actual transaction-specific rate calculated from a cooperative mandatory respondent, thereby reflecting actual economic activity. By calculating a simple average of this rate and the three mandatory respondents’ rates, the Department calculated a separate rate of 6.41 percent, which reasonably reflects a potential dumping margin for a separate respondent based on the record of this investigation.

IV. FINAL RESULTS OF REDETERMINATION

Following the Court's directive, the Department has revalued certain SVs. Based on these actions, we have calculated *de minimis* margins of 0.00 percent for Layo Wood and Samling. Accordingly, the margin for the separate rate respondents is 6.41 percent, and the margin for the PRC-wide entity is 25.62 percent.



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

November 14, 2013

Date