

**Final Results of Redetermination Pursuant to Court Remand
Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof
from the People's Republic of China
Since Hardware (Guangzhou) Co., Ltd. v. United States, Court No. 11-00106, Slip Op. 14-44**

Summary

The Department of Commerce (Department) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No. 11-00106, slip op. 14-44 (Ct. Int'l Trade April 15, 2014) (*Since Hardware III*).¹ This action arises out of the final results of the August 1, 2008, through July 31, 2009, administrative review of the antidumping duty order on floor-standing metal-top ironing tables and certain parts thereof from the People's Republic of China.² On December 17, 2012, the Department issued its *First Redetermination* in which it 1) reconsidered the public availability of the financial statements used in the *Final Results*, 2) explained why the Department selected the 2006-2007 financial statements of Infiniti Modules (Infiniti) and declined to use the 2008-2009 financial statements of Omax Autos (Omax) or Maximaa Systems Limited (Maximaa), 3) defended the Department's brokerage and handling calculation and responded to the objections raised to that calculation by Foshan Shunde Yongjian Housewares & Hardware Co. (Foshan Shunde), 4) recalculated labor wage rates to conform with the Court's decision in *Home Products*

¹ On May 15, 2014, Home Products International (HPI) filed a motion for rehearing before the Court pursuant to USCIT Rule 59(a) (Motion for Rehearing). In its Motion for a Rehearing, HPI identified aspects of the Court's ruling with regards to brokerage and handling that HPI contends merit reconsideration by the Court. Notwithstanding HPI's motion for rehearing, the Department has recalculated brokerage and handling expenses according to the Court's instructions in *Since Hardware III*.

² See *Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 76 FR 15297 (March 21, 2011), and accompanying Issues and Decision Memorandum, as amended by *Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Notice of Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 23543 (April 27, 2011) (collectively, *Final Results*).

International,³ and 5) recalculated the cotton conversion factor used in the antidumping calculation for Since Hardware (Guangzhou) Co., Ltd. (*Since Hardware*).⁴

Upon consideration of the *First Redetermination*, the Court affirmed our 1) calculation of Since Hardware's cotton conversion factor, 2) recalculation of labor expense, 3) decision to reject the financial statements of Omax as a source of financial ratios, and 4) use of World Bank data to derive brokerage and handling expenses. The Court also remanded the case to the Department to reconsider several issues. First, the Court remanded the case to reconsider using financial statements from Maximaa in light of the fact that Infiniti's statements are non-contemporaneous and present public availability concerns. Second, the Court remanded the case to reconsider the respondent's claim that World Bank data unfairly represent brokerage and handling costs that differ between inland and seaport cities in light of the \$165 differential identified by the Court. Third, with regard to 20-foot and 40-foot container sizes, the Court remanded the case to reconsider evidence from the respondent showing that port and terminal handling costs only increase by 30 to 50 percent relative to container size rather than increasing proportionally.

On August 14, 2013, the Department issued its *Second Redetermination*⁵ in which it further explained its basis for selecting the financial statements of Infiniti over those of Maximaa, 2) recalculated the portion of Foshan Shunde's brokerage and handling expense related to the container size adjustment, and 3) reconsidered Foshan Shunde's objections

³ See *Home Products International Inc. v. United States*, Court No. 11-00104, Final Results of Redetermination (March 14, 2012) (*Home Products International*).

⁴ See Final Results of Redetermination Pursuant to Court Remand Floor Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated December 17, 2012 (First Redetermination). The First Redetermination was issued pursuant to *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No. 11-00106 (August 14, 2012) (*Since Hardware I*).

⁵ The Second Redetermination was issued pursuant to *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No. 11-00106, slip op. 13-69 (Ct. Int'l Trade May 30, 2013) (*Since Hardware II*).

regarding the difference between inland and seaport cities and determined that no adjustment to that calculation is warranted.

In *Since Hardware III*, the Court affirmed the Department's selection of Infiniti's financial statements over those of Maxima.⁶ However, the Court remanded for further consideration four aspects of the Department's brokerage and handling calculation discussed below. First, the Court determined that the Department's use of the World Bank data point for Mumbai (\$645) to represent brokerage and handling costs was not supported by substantial evidence.⁷ Rather, the Court concluded that "the only reasonable option on remand would be to select the average of the data from all 17 {Indian} cities as its baseline for calculating brokerage and handling costs."⁸

Additionally, the Court determined that the Department acted unreasonably by increasing the ports and terminal component of Foshan Shunde's brokerage and handling costs by 50 percent rather than by 30 to 40 percent.⁹ The Court based this finding upon argument submitted by Foshan Shunde that purportedly demonstrates an increase in the ports and terminal handling costs of as low as 30 percent.¹⁰

The Court further directed the Department to consider the "bill of lading evidence" submitted by Foshan Shunde.¹¹ In this regard, the Court cited to argument submitted by Foshan Shunde that "Foshan Shunde actually incurred document preparation and customs clearance costs once every 6.2 containers it shipped."¹² The Court rejected the Department's argument that the redetermination of brokerage and handling set forth in *Since Hardware II* was limited to the

⁶ See *Since Hardware III* at 4-10.

⁷ *Id.* at 17-21.

⁸ *Id.* at 20-21.

⁹ *Id.* at 21.

¹⁰ *Id.* at 22.

¹¹ *Id.*

¹² *Id.*

ports and terminal handling component of Foshan Shunde's brokerage and handling calculation.

The Court indicated that:

{N}owhere did the Court state that this finding was limited to ports and terminal handling charges, only one of three components of the \$645 data point. More to the point, the Court did not sustain Commerce's treatment of document preparation and customs clearance fees....¹³

With regards to brokerage and handling, the Court rejected the Department's estimated calculation of the weight of the shipment that Foshan Shunde would have incurred had it shipped in 20-foot containers rather than in 40-foot containers. The Court indicated that "the evidence submitted by Foshan Shunde indicates that the fee structure is per container, not per kilograms in a container."¹⁴ The Court concluded that evidence "on the record with respect to the relationship between container size and {brokerage and handling} costs thus does not support increasing any cost component relative to container weight."¹⁵ In remanding the brokerage and handling calculation to the Department, the Court set forth two alternatives for allocating brokerage and handling costs.¹⁶ The first alternative identified by the Court is Foshan Shunde's "actual 40 foot container weight."¹⁷ As a second alternative, the Court suggested the Department could use the average number of units that Foshan Shunde shipped per 40-foot container.¹⁸ Based upon the brokerage and handling analysis set forth in *Since Hardware III*, the Court

¹³ *Id.* at 23.

¹⁴ *Id.* at 24-25.

¹⁵ *Id.* at 25.

¹⁶ *Id.* at 27.

¹⁷ *Id.*

¹⁸ *Id.*

stipulated a formula of $((\$229.76 + \$78.18) * (1/6.2) / W + ((\$166 * X) / W)$,¹⁹ which it suggested would be consistent with the Court's brokerage and handling analysis.²⁰

Finally, in *Since Hardware III*, the Court directed the Department to address Foshan Shunde's arguments regarding zeroing. Foshan Shunde argued that the decision of the Court of Appeals for the Federal Circuit (Federal Circuit) in *Union Steel*²¹ pertains solely to market economy (ME) cases and does not apply to non-market economy (NME) cases.²²

In this redetermination, the Department recalculated brokerage and handling according to the Court's instructions in *Since Hardware III* with respect to averaging data from all 17 Indian cities and using *Since Hardware*'s actual weight. However, for the reasons set forth in the "Discussion" section below, we conducted this redetermination under respectful protest.²³

On June 20, 2014, the Department released to all parties a draft of its determination on remand (Draft Redetermination). We set a deadline of June 25, 2014 for parties to comment on the Draft Redetermination. On June 25, 2014, the Court granted the Department an extension until July 8, 2014 for the filing of the final results. On June 25 and June 26, 2014, we issued letters which extended the time frame for filing comments on the Draft Redetermination until June 27, 2014. We received timely comments from Foshan Shunde and *Since Hardware* on June 26 and June 27, 2014.

¹⁹ \$229.76 represents the average document preparation charges for the 17 subnational ports identified in the 2010 *Doing Business India* World Bank study; \$78.18 represents the average customs clearing component for these 17 subnational ports; while \$166.00 represents the average ports and terminal handling component for these 17 subnational ports. 1/6.2 speaks to Foshan Shunde's assertion that brokerage and handling charges should be reduced because Foshan Shunde purportedly issues one bill of lading for every 6.2 containers. "X" represents, the Court's suggested conversion factor for shipments from a 20-foot to a 40-foot container size. Finally, "W" represents Foshan Shunde's 40-foot container weight.

²⁰ *Id.* at 28.

²¹ See *Union Steel v. United States*, 713 F.3d 1101 (Fed. Cir. 2013) (*Union Steel*).

²² See *Since Hardware III* at 29.

²³ See *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003) (*Viraj*).

Discussion

Brokerage and Handling

A) Data Points Used in Calculation

In *Since Hardware II*, the Court directed the Department to address Foshan Shunde's argument that brokerage and handling costs were lower on average for companies nearer to a seaport (such as Foshan Shunde) than are brokerage and handling costs for companies farther inland from a seaport.²⁴ In complying with the Court's order, in its *Second Redetermination*, the Department considered sub-national reports from 10 other Indian cities and determined that inland freight costs bore no relation to proximity to a seaport.²⁵ In the third remand, the Court concluded that "no reasonable mind would conclude that the Mumbai-only data point is the 'best available' information on the record to provide the baseline for calculating Foshan Shunde's B&H {brokerage and handling} costs."²⁶ In this regard the Court noted:

... Commerce may not have intended to undercut its selection of the \$645 Mumbai-only data point, when it took the risk of adding subnational reports for inland cities to the administrative record. But now that it has, Commerce must reconsider its calculation of Foshan Shunde's B&H Costs. Relying on the Mumbai only data point in isolation is not reasonable in light of identical quality record evidence of B&H costs for 16 additional cities, which when averaged with the Mumbai-only data point yield the broadest B&H cost data on the record. It therefore, appears that the only reasonable option on remand would be to select the average of the data from all 17 cities as its baseline for calculating Foshan Shunde's B&H costs. This, therefore, is what Commerce must do.²⁷

In this redetermination, we have, under protest, complied with the Court's order and employed a simple average of all 17 Indian cities to represent Foshan Shunde's baseline

²⁴ See *Since Hardware II* at 30.

²⁵ See *Second Redetermination* at 11-14.

²⁶ See *Since Hardware III* at 18.

²⁷ *Id.* at 20-21.

brokerage and handling calculation. In this regard, we respectfully note the following objections to this aspect of the Court's order. First, on October 18, 2010, as part of its surrogate value comments in the 2009-2010 review, Foshan Shunde initially submitted information delineating the brokerage and handling methodology employed in the World Bank study.²⁸ Moreover, in its October 18, 2010 Surrogate Value Submission, Foshan Shunde provided Subnational Reports for four Indian ports.²⁹ However, notwithstanding that Foshan Shunde was in possession of all of the material necessary to comment on the World Bank's methodology, and despite Foshan Shunde having filed this information on the record of this review in October 2010, Foshan Shunde made no challenge to the methodology of the World Bank study until July 2013 when Foshan Shunde commented on the Department's *Second Redetermination*. Thus, at the administrative level, the Department had no opportunity to either 1) address Foshan Shunde's arguments regarding the reasonableness of the World Bank methodology, or 2) evaluate whether the sixteen additional data points, in addition to Mumbai, represent reliable sources of data.

Moreover, we note several significant differences between the subnational data points utilized in this redetermination, and the World Bank's general methodology of relying on the largest city within a country to represent the brokerage and handling expense data point. First, while World Bank data are updated annually, as explained below, subnational data are prepared much less frequently.³⁰ With regards to India, the only Subnational Reports undertaken by the

²⁸ See Foshan Shunde October 18, 2010 Surrogate Value Submission at Exhibit 3 (*Doing Business India* 2010 study), Exhibit 6 (a discussion of the general methodology of the Trading Across Borders studies), Exhibit 7 (a discussion of the methodology supporting the Doing Business studies), and Exhibit 8 (a discussion of the cost of doing business in 183 separate countries).

²⁹ *Id.* at exhibit 4. The four ports for which Foshan Shunde provided subnational information on October 18, 2010, are 1) Chennai, 2) Kochi, 3) Kolkata, and 4) Mumbai. Foshan Shunde chose not to put the remaining 13 Indian Subnational Reports on the record of the proceeding.

³⁰ The Department placed the 2009 Indian Subnational Report (*Doing Business in India 2009: Subnational Series*) on the record of this redetermination. It is attached as Exhibit 4 of the "Memorandum from Michael J. Heaney to

World Bank were prepared in 2009. Second, while the World Bank's *Doing Business* series provides comparisons of business conditions across 183 separate countries, Subnational Reports are designed for purposes of permitting comparisons within a country rather than for conducting cross-country comparisons. As the World Bank indicates in its website which discusses the purpose of it preparing Subnational Reports:

Subnational Doing Business reports capture differences in business regulations and their enforcement across locations in a single country. They provide data on the ease of doing business, rank each location, and recommend reforms in each of the indicator areas.³¹

Additionally, the Department finds other difficulties inherent in granting equal weight to Mumbai and the 16 other subnational data points specified by the Court. Mumbai is by far the largest port in India, and under any methodology that considers total port traffic, Mumbai would qualify as India's most significant port. We note that Mumbai is the 24th largest container port in the world and processes approximately 60 percent of India's container traffic.³² Thus, excluding Mumbai, the remaining 16 Indian ports combined handle less than the 40 percent of India's container traffic. Additionally, Mumbai has a 2011 population of 12,478,447,³³ whereas six of the subnational port cities have 2011 populations of less than a million people³⁴ and four other Indian cities have populations of less than two million.³⁵ Moreover, we note that other than acknowledging that Mumbai is the largest port in India, there is no information in the World

the File dated June 20, 2014 Re: Foshan Shunde Third Redetermination Draft Analysis" (Foshan Shunde Third Draft Redetermination Analysis Memorandum).

³¹ *Id.* at Exhibit 5 (printout of World Bank's website available at <http://www.doingbusiness.org/Reports/Subnational%20Reports>).

³² *Id.* at Exhibit 6 (printout of Jawaharlal Nehru Port Website available at <http://www.jnport.gov.in/AboutJNPT.aspx?id=2&cid=1>).

³³ *Id.* at Exhibit 7 (printout summarizing the results of the official Indian census of 2011 available at <http://www.census2011.co.in/city.php>).

³⁴ *Id.* These six cities include Guwahati (963,429), Gurgaon (876,824), Bhubaneswar (837,737), Noida (642,381), Kochi (601,574) and New Delhi (249,998).

³⁵ *Id.* These four cities include Indore (1,960,631), Patna (1,683,200), Ludhiana (1,613,878) and Ranchi (1,073,440).

Bank report or elsewhere on the record of this proceeding which would permit the Department to calculate weighted-average brokerage and handling charges based on the traffic coming through each of the Indian ports used in this redetermination. Finally, we note that Foshan Shunde itself is located in a large Chinese city, which is near two large Chinese seaports: Guangzhou and Hong Kong. We, thus, respectfully suggest that the Mumbai data point may represent the most appropriate value to represent Foshan Shunde's brokerage and handling expense in this case.

Notwithstanding the objections noted above, as directed by the Court, and under respectful protest, we selected data from the 17 data points identified by the Court to represent Foshan Shunde's brokerage and handling expenses.³⁶

B) Calculation of the Correct Proportionate Increase in Foshan Shunde's Ports and Terminal Handling Charge

In *Since Hardware III*, the Court took note of evidence submitted by Foshan Shunde which suggests that the ports and terminal handling charges component of Foshan Shunde's brokerage and handling expense may increase by as little as 30 percent rather than the full 50 percent increase applied by the Department in the Second Redetermination.³⁷ The Court has suggested that a 40 percent increase to the ports and terminal handling component of Foshan Shunde's brokerage and handling expense would be reasonable.³⁸ In this redetermination, we reexamined the record evidence offered by Foshan Shunde. Because our review of that evidence indicates that the ports and terminal handling component of Foshan Shunde's brokerage and handling expenses consistently increased by 50 percent, we have continued to apply a 50 percent increase in this third redetermination.

³⁶ *Id.* at 1.

³⁷ *See Since Hardware III* at 22.

³⁸ *Id.*

In its August 24, 2010 surrogate value submission, Foshan Shunde provided ports and terminal schedules for four Indian ports: Chennai, Cochin, Kolkata and Mumbai.³⁹ In this redetermination for each of the four ports that Foshan Shunde selected, we reviewed the percentage cost difference between the ports and terminal handling charges information provided by Foshan Shunde with regards to shipment in both 20-foot and 40-foot containers.⁴⁰ As discussed below, our review of Foshan Shunde's information indicates that the ports and terminal component of brokerage and handling expense consistently increased by 50 percent for all but one of these four Indian ports. For Chennai, the information provided by Foshan Shunde enumerates 15 separate ports and terminal handling charges.⁴¹ For each of these 15 Chennai port charges, the listed cost for shipment in a container "Exceeding 20' and up to 40' in length" is 50 percent greater than the charges for a container size "Not exceeding 20' in length."⁴² Similarly, for Cochin, 10 specific charges are separately enumerated.⁴³ With the exception of "storage" charges, the cost for shipment in a "Container not exceeding 20 foot in length and up to 40 foot length" is 50 percent greater than the cost of shipment in a "Container not exceeding

³⁹ See Foshan Shunde August 24, 2010 submission at Exhibit 1.

⁴⁰ *Id.*

⁴¹ *Id.* These charges are 1) "Handling of FCL by Quay Crane and lashing/unlashing charges", 2) "Transportation from QC to Yard and Vice Versa", 3) "Handling at Container Yard including lift on/off, delivery/receipt to and from customers", 4) "Handling by Quay Crane Including lashing/unlashing charges", 5) "Handling at Container Yard including lift on/off transportation to and from CFS", 6) "Stuffing/destuffing of Cargo at the CCT", 7) "Handling by Quay Crane including lashing/unlashing charges", 8) "Transportation from QC to Container Yard & Vice Versa", 9) "Handling at Container Yard including lift on/off at container Rail Yard", 10) "Charges for handling Transshipment Containers including handling by on board stevedoring labour at Quay side, lashing/unlashing charges", 11) "Charges for Wharfage", 12) "Charges for handling hatch covers for one operation (both operating and closing)", 13) "Charges for shifting containers within vessel (Restows)", 14) "Reefer related and other General Services" and 15) "Charges for a shut out container /renomination of containers."

⁴² *Id.* For example, with regards to "Handling of FCL by Quay Crane and lashing/unlashing charges", the listed charge for a container "Exceeding 20' and up to 40' in length" is \$33.78, which is 50 percent greater than the 22.53 charge for a container "Not exceeding 20' in length."

⁴³ *Id.* These charges are 1) "Gantry Cranes Charges", 2) "Bay Shifting Charges (Restows)", 3) "Charges for handling hatches (For Opening or closing the hatch cover)", 4) "For handling any item of heavy cargo / container which requires usage of 60 tonne hook (cargo beam) of the gantry crane", 5) "Charges for use of other containers handling equipmen {sic}", 6) "Handling at Container Yard for lift on /off, or delivery/receipt to and from customers", 7) "Composite Handling Charges for Transshipment Containers", 8) "Wharfage Charges", 9) "Reefer Charges", and 10) "Storage Charges -per day or part thereof."

20 foot in length.”⁴⁴ With regards to Kolkata, the relevant rate schedule stipulates that from shipment in a 20-foot container, “Charges for handling of containers above 20’ and up to 40’ shall be 1.5 times the rates specified at S.11 {“wharfage charges”}, S.12 {“On board handling charges on container”}, S.13 {“Shore handling charges on container”} and S.14 {“Charges for miscellaneous services rendered to container/container vessel”}.⁴⁵ Finally, concerning Mumbai, we note that the rate schedules for that port enumerate seven separate charges for both “Composite Charges on Cargo containers Handled with Quayside Gantry Charges” and for “Composite charges on Cargo Handled with cranes other than Quayside Gantry Charges.”⁴⁶ As with the other three port schedules submitted by Foshan Shunde, the cost for “Containers above 20’ but up to 40’” in Mumbai are consistently 50 percent greater than it is for shipments in “Containers up to 20’.”⁴⁷

Based upon the foregoing, we continue to maintain that a 50 percent increase in use of a 40-foot container relative to a 20-foot container is reasonable.

⁴⁴ *Id.* For example, the listed “Gantry Change Charges” for a “Container not exceeding 20 foot in length and up to 40 foot length” is 891 Rupees which is 50 percent greater than the 594 Rupee charge listed for a “Container not exceeding 20 foot in length.” In contrast, the “Storage” charges listed involve a free-of-charge grace period. “Storage” charges then vary according to duration of storage. However, we note that after expiration of the grace period, storage charges for a “Container not exceeding 20 foot in length and up to 40 foot length” increase 100 percent over charges for a “Container not exceeding 20 foot in length.”

⁴⁵ *Id.*

⁴⁶ *Id.* These seven charges are for 1) “General Containers”, 2) “Hazardous Containers”, 3) “ICD Containers”, 4) Transshipment Containers”, 5) “Same Bottom Containers”, 6) “Export containers bought by Barges under Shipping Bills from other ports for shipment”, and 7) “Containers moved by Barges between MBPT & other Ports.”

⁴⁷ *See id.* The charges for “Containers above 20’ but up to 40’” are consistently 50 percent greater than the charges for “Containers up to 20’.” For example, the general container charge relating to the “Quayside Gantry Charges” for “loaded” “Containers above 20’ but up to 40’” is 2,805 Rupees, which is 50 percent greater than the 1,870 Rupee charge for a “loaded” “Containers up to 20’.”

C) Whether Foshan Shunde's Bill of Lading Practice Should Impact the Department's Brokerage and Handling Calculation

In *Since Hardware III*, the Court directed the Department to consider evidence that “Foshan Shunde actually incurred document preparation and customs clearance fees once every 6.2 containers it shipped.”⁴⁸ The Court determined that:

Commerce’s refusal to address Foshan Shunde’s evidence contravenes the Court’s finding that “Commerce unreasonably concluded {in the First Remand Results} that Foshan Shunde had failed to demonstrate which if any costs ... do not increase proportionately with volume.” *Since Hardware II*, 37 CIT at ___, 911 F.Supp. 2d at 1380-1381.⁴⁹

Based upon the Court’s instructions, we have considered the “bill of lading evidence” offered by Foshan Shunde. For the reasons outlined below, we do not find anything in the World Bank’s *Doing Business: India* study, or in the argument offered by Foshan Shunde regarding the number of bills of lading that Foshan Shunde issues, that supports Foshan Shunde’s assertion that brokerage and handling expenses should be divided by 6.2 to derive a representative cost of containers shipped.

One purpose of the *Doing Business: India* study is to measure the time and cost of exporting a container of merchandise.⁵⁰ In doing so, we believe the World Bank does consider the time and expense associated with issuing all export documents, including the bill of lading or, if applicable, a portion thereof, in order to arrive at the costs associated with shipping one

⁴⁸ See *Since Hardware III* at 22.

⁴⁹ *Id.* at 23.

⁵⁰ See “Trading Across Borders” attached at Exhibit 3 of Foshan Shunde’s October 18, 2010 Surrogate Value Submission.

container.⁵¹ We note that while the cost of a bill of lading is not a separately identified line item in the *Doing Business: India* study, the study itself is comprehensive. The World Bank indicates that “{e}very procedure and the associated documents, time and cost, for importing and exporting goods is recorded, starting with the contractual agreements between the two parties and ending with the delivery of the goods.”⁵² We do not know from this study the ratio of the number of containers to the number of bills of lading, nor is it necessary for us to obtain that information in order to recognize the validity and merits of the study. Moreover, we note that the study includes all reported costs for trading a “standard shipment of goods by ocean transport.”⁵³ In this sense, the number of bills of lading generated by Foshan Shunde cannot be integrated into the *Doing Business: India* study because the information in the study seeks to prescribe the total time and cost of exporting without specifying the specific number of bills of lading that are issued with each shipment. Nor is the number of Foshan’s Shunde’s bills of lading relevant to measuring the time and cost of exporting a 20-foot container of merchandise, as the *Doing Business: India* study is designed to do, because the study includes every procedure and associated document in its quoted cost of shipping a 20-foot container.

Similarly, the “Trading Across Borders” survey asked Indian respondents, among other things, to detail the time and cost of issuing export-related documentation, including documentation performed electronically.⁵⁴ In seeking to determine export cost, the World Bank stipulates that:

⁵¹ *Id.* (“Documents recorded include port filing documents, customs declaration and clearance documents, as well as official documents exchanged between the parties to the transaction.”) (“Costs include the fees levied on a 20 foot container in U.S. dollars.”).

⁵² *Id.* (emphasis added).

⁵³ *Id.*

⁵⁴ See, e.g., “Trading Across Borders Survey” at 4, which is attached at Exhibit 5 of Foshan Shunde’s October 18, 2010 Surrogate Value Submission.

Cost measures the fees levied on a 20 foot container in U.S. dollars. All the fees associated with the procedures to export or import the goods are included. These costs include costs for documents, administrative fees for customs clearance and technical control, customs broker fees, terminal handling charges and inland transport.⁵⁵

In summary, there is no attempt in the *Doing Business: India* study to use the number of bills of lading issued by Indian survey takers as an estimate or proxy for determining actual brokerage and handling expenses. Rather, through its *Doing Business* studies, the World Bank seeks to determine brokerage and handling expense by determining the time and cost component associated with each container exported. The number of bills of lading issued by Foshan Shunde is not captured by the total time and cost component of brokerage and handling expenses that the World Bank seeks to measure.

Lastly, we note that Foshan Shunde based this proposed adjustment to brokerage and handling expense upon an extremely limited number of U.S. sales. Foshan Shunde derived its claim for a “6.2” adjustment upon examination of nine U.S. sales traces examined at verification, which themselves were culled from a U.S. database that is approximately 70 times larger than the sample base used by Foshan Shunde.⁵⁶ Even assuming that the number of bills of lading issued by Foshan Shunde was a relevant metric for determining brokerage and handling cost, Foshan Shunde has selected its sample from an extremely small pool of data.

Based upon the foregoing, we find that the World Bank does not use the number of bills of lading as a distinct measure to determine brokerage and handling expense. We have, therefore, in this redetermination made no division by 6.2 to Foshan Shunde’s overall pool of brokerage and handling expenses.

⁵⁵ *Id.* at 5.

⁵⁶ See Foshan Shunde Rule 56.2 Brief at 20 which cites to Foshan Shunde’s November 20, 2009 Section C Questionnaire Response at C-4.

D) Proper Calculation Formula for Determining Foshan Shunde's Container Weight

In *Since Hardware III*, the Court rejected the Department's division of Foshan Shunde's baseline brokerage and handling costs by an amount that represented the estimated shipment weight had Foshan Shunde shipped in 20-foot containers rather than in 40-foot containers.⁵⁷ The Court determined the Department's reliance:

... on the parameters of the World Bank study is inapposite. The fact that the World Bank expressed all "trading across borders" on a 20 foot container basis establishes nothing about the relationship between the costs of 20 foot containers versus 40 foot containers.⁵⁸ (Court's emphasis).

Based upon the foregoing, in this redetermination, and under protest, we made no adjustment for the difference between shipments in a 20-foot container relative to shipments in a 40-foot container.⁵⁹ Instead, we have adopted in this redetermination the formula specified by the Court, which incorporates the shipment weights incurred by Foshan Shunde. In this regard, and based upon the analysis set forth in this third remand, we employed the following formula to calculate Foshan Shunde's brokerage and handling expense:

$$\text{Brokerage and Handling} = ((\$229.76 + \$78.18)/W) + ((\$166*1.5)/W).^{60}$$

⁵⁷ See *Since Hardware III* at 24-27.

⁵⁸ *Id.* at 25.

⁵⁹ We note herein that the brokerage and handling information compiled by the World Bank data is for shipment in a 20-foot container. See *Doing Business: India 2010* at 91-92. We continue to maintain that in our second redetermination calculation of brokerage and handling expense, we properly accounted for the difference in capacity between the 20-foot container size detailed in the World Bank study and shipment in the 40-foot container size utilized by Foshan Shunde. Nevertheless, consistent with the Court's instructions, in this redetermination we have used the actual shipment weight reported by Foshan Shunde. Therefore, we made no adjustment to account for any difference between shipment in a 20-foot container instead of shipment in a 40-foot container.

⁶⁰ In this formula, \$229.76 represents the average document preparation charges for the 17 subnational ports identified in the *2010 Doing Business: India* World Bank study; \$78.18 represents the average customs clearing component for these 17 subnational ports; while \$166.00 represents the average ports and terminal handling component for these 17 subnational ports. "W" represents the shipment weight reported by Foshan Shunde. See Attachment 1 to this final redetermination for a public summary of brokerage and handling calculation used in this

For the reasons noted above, the Department rejected Foshan's Shunde's assertion that Foshan Shunde's brokerage and handling amount should be divided by 6.2. Additionally, based upon its examination of record evidence, the Department continues to maintain that the ports and terminal handling component should be increased by 50 percent through shipment in a 40-foot container rather than a 20-foot container.

Zeroing

We maintain that *Union Steel* is applicable in NME reviews as well as ME reviews. The recent decision by the Federal Circuit in *Union Steel* resolved the outstanding question of whether the Department's interpretation of section 771(35) of the Tariff Act of 1930 is reasonable. The Federal Circuit affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the Average to Transaction (A-to-T) comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the Average to Average (A-to-A) comparison method in investigations.⁶¹ The Federal Circuit also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.⁶² Indeed, the Court noted that although the Department recently modified its practice "to allow for offsets when making A-to-A comparisons in administrative reviews . . . {t}his

redetermination. A proprietary version of the summary is available at t page 1-2 of the Foshan Shunde Draft Redetermination Analysis Memorandum.

⁶¹ See *Union Steel* at 1106.

⁶² *Id.*

modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns.”⁶³

Likewise, in *U.S. Steel Corp*⁶⁴, the Federal Circuit sustained the Department’s decision to no longer apply zeroing when employing the A-to-A comparison method in investigations while recognizing the Department’s intent to continue to apply zeroing in other circumstances. Specifically, the Court recognized that the Department may use zeroing when applying the A-to-T comparison method where patterns of significant price differences are found.⁶⁵

We also disagree with Foshan Shunde’s contention that the Court’s decision in *Union Steel* is limited to ME reviews. Foshan Shunde has argued that the A-to-T method used in ME reviews differs significantly from the methodology that the Department employs in administrative reviews of antidumping duty orders for a non-market economy. Foshan Shunde further asserts antidumping duty orders that involve NME economies are distinguishable from ME reviews because NME reviews make use of averages whereas ME reviews use monthly averages. However, this purported distinction is only true where normal value is based on comparison market sale prices; Foshan Shunde’s argument ignores ME reviews where normal value is based on constructed value. The argument that *Union Steel* only applies to ME reviews where normal value was based on comparison market sales overlooks the fact that the review underlying the *Union Steel* decision involved use of constructed value.⁶⁶ Although the

⁶³ *Id.*

⁶⁴ See *United States Steel Corp. v. United States*, 621 F. 3d 1351, 1357 (Fed. Cir.2010) (*U.S. Steel Corp.*).

⁶⁵ *Id.* at 1355 n.2, 1362-63.

⁶⁶ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011).

Department modified its cost-calculation methodology in that review, the Department's normal practice is to calculate an annual weighted-average cost for the POR.⁶⁷

Cost of production is calculated according to a statutory formula by adding together several costs and expenses, including the cost of materials, fabrication, containers, coverings, and other processing costs, and selling, general, and administrative expenses. . . . The constructed value of merchandise, which is the basis for normal value when there are insufficient sales in the exporting country or a third country, is the sum of the same costs and expenses used to calculate cost of production, plus realized profits. . . . Under its standard methodology, Commerce determines cost of production by calculating a single weighted-average cost for the period of review.⁶⁸

Although section 777A(d)(2) of the Act states that in reviews, "when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale." Section 773(e) of the Act discusses the use of constructed value as the basis for normal value, and contains no such limits regarding the time period for production costs used to calculate constructed value as the basis for normal value. In fact, the Department's practice, as explained above, is to calculate a single, weighted-average product-specific cost for the period of review. As we explained: "{w}e use annual average costs in order to even out swings in production costs experienced by respondents over short periods of time. This way, we smooth out the effect of fluctuating raw material costs."⁶⁹

⁶⁷ See, e.g., *Notice of Final Results of the Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada (Wire Rod from Canada)* and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period).

⁶⁸ See *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1084 (Fed Cir. 2001).

⁶⁹ See *Wire Rod from Canada* and accompanying Issues and Decision Memorandum at Comment 5.

Likewise, in non-market economy reviews, such as this one, pursuant to section 773(c)(1) of the Act, the Department calculates a single product-specific weighted-average normal value for the POR in a manner similar to how it calculates constructed value, except that it values the factors of production utilizing, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Notwithstanding Foshan Shunde's claim to the contrary, the Court's decision in *Union Steel* was not restricted to market economy reviews in which normal value was based on comparison market sale prices. Therefore, consistent with the Department's normal practice in reviews involving non-market economy countries, we properly applied the A-to-T method to Foshan Shunde's sales. Further, in doing so, we properly denied offsets for non-dumped transactions as part of the A-to-T method.

Analysis of Comments Received

Comment 1: Subnational Data Points

Foshan Shunde notes that in its Draft Redetermination, the Department, under protest, used a simple average of 17 Indian cities to represent brokerage and handling expense. Foshan Shunde argues that the Department improperly protested this aspect of the Court's order. Foshan Shunde asserts that in the Final Results, the Department "intended to use a 'broad market average' in India as a basis for its brokerage and handling calculation."⁷⁰ Foshan Shunde contends that the Department "evidently assumed that its B&H calculation was based on data from all 17 locations and stated that 'the World Bank study constitutes a more broad survey of

⁷⁰ See Foshan Shunde's June 26, 2014 letter at 2 citing *Final Results* and Accompanying Issues and Decision Memorandum at Comment 3.

costs in the Indian market and thus a more credible and representative source than the data provided by Foshan Shunde that are *limited to select Indian companies and ports.*”⁷¹ Foshan Shunde further notes that in the *Final Results*, the Department cited to *Polyester Staple Fiber from China*, wherein the Department indicated that the Doing Business information includes information from 17 Indian cities.⁷²

Foshan Shunde asserts that all parties to this proceeding erroneously assumed that the *Doing Business: India* data comprised information from 17 different Indian cities, when in fact the *Doing Business: India* data comprised one port.⁷³ Foshan Shunde contends that it was not until the *2010 Helical Springs Review* in which the Department used data from all 17 Indian cities to calculate brokerage and handling expenses.⁷⁴ Foshan Shunde further asserts that in outlining its protest to this aspect of the Court’s order, the Department “relies heavily” upon arguments that Petitioner set forth in its May 15, 2014, Motion for Rehearing.⁷⁵ Foshan Shunde contends that the Department should refrain from adopting findings promoted by Petitioner’s May 15, 2014, Motion for Rehearing because HPI was aware of the position taken by the Department in the *2010 Helical Springs Review*, and because the Petitioner was “fully aware that the Department intended to rely on Indian B&H data that covers 17 different locations in India.”⁷⁶ Foshan Shunde concludes that the Department’s “entire justification for departing from

⁷¹ See Foshan Shunde’s June 26, 2014 letter at 2-3 citing *Final Results* and Accompanying Issues and Decision Memorandum at Comment 3. (Foshan Shunde’s emphasis).

⁷² See *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 76 FR 2886 (January 18, 2011) and Accompanying Issues and Decision Memorandum at Comment 2 (*Polyester Staple Fiber from China*).

⁷³ See Foshan Shunde’s June 26, 2014 letter at 3.

⁷⁴ See *Certain Helical Spring Lock Washers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720 May 27, 2010 and Accompanying Issues and Decision Memorandum at Comment 6 (*2010 Helical Springs Review*).

⁷⁵ See Foshan Shunde June 26, 2014 letter at 4.

⁷⁶ *Id.*

the use of actual exporter costs rested entirely on the premise that the Department would rely on the costs indicated for all locations reported in the Indian sub-national report.”⁷⁷

Department's Position

We continue to use subnational data points in the brokerage and handling calculation under respectful protest. As noted in the Draft Redetermination, there are significant differences between the subnational data points utilized in this redetermination, and the World Bank's general methodology which is to rely on the largest city within a country to represent the brokerage and handling data point.⁷⁸ These differences include the fact that 1) subnational data points are prepared much less frequently and are used for a different purpose than the annual data prepared by the World Bank for the largest city under examination in the *Doing Business* studies,⁷⁹ 2) Mumbai represents 60 percent of India's container traffic, leaving the remaining 16 Indian ports to handle 40 percent or less of India's remaining total container traffic,⁸⁰ 3) Mumbai's status as the largest city in India renders it a more appropriate data point than the smaller subnational data points,⁸¹ and 4) the lack of port traffic information in the World Bank study precludes the Department from calculating a weighted average brokerage and handling cost which would consider the volume of cargo or container traffic processed at each of the remaining 16 ports.⁸²

Foshan Shunde argued that the Department endeavored from the onset of this proceeding to calculate a broad market average to represent brokerage and handling expenses. However, the absence of subnational port traffic information in the World Bank study, by definition, narrows

⁷⁷ *Id.*

⁷⁸ See Draft Redetermination at 7.

⁷⁹ *Id.* at 8.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

the scope of the brokerage and handling calculation and obviates the Department's ability to calculate a simple mathematical average of the 17 Indian cities. Moreover, we note that such a simple mathematical average ignores Mumbai's status as India's preeminent port, and that Foshan Shunde is itself located between two cities (Guangzhou and Hong Kong) which, like Mumbai, have extremely large populations. In the Department's view, Mumbai's large population renders this port particularly suitable for comparison to ports such as Guangzhou and Hong Kong which also have large populations. Finally, in reaching the conclusions set forth in this redetermination, we note that we relied upon information which we independently researched and put on the record of this proceeding. Foshan Shunde's suggestion that the Department should avoid protesting this aspect of the Court's ruling simply because Petitioner submitted similar objections in its May 15, 2014, Motion for Rehearing is without merit.

Comment 2 Reduction of Foshan Shunde's Document Preparation Costs for the Average Number of Containers Included in One Bill of Lading

Foshan Shunde asserts that the Department should reduce its document preparation costs by the average number of containers that it includes on one bill of lading. Foshan Shunde asserts that the World Bank materials on record preclude consideration of reported costs for multiple shipments or for the use of multiple containers on one shipment.⁸³ Foshan Shunde avers that "such considerations would thwart the World Bank's purpose of ensuring that the collected data was comparable across economies and ruin the symmetry of the country reports in relation to one another."⁸⁴ Foshan Shunde further suggests that the assumptions embedded in the World Bank

⁸³ See Foshan Shunde's June 26, 2014 letter at 5.

⁸⁴ *Id.*

study⁸⁵ establish that no contributor to the World Bank study considered whether costs for multiple containers might be included in one set of export documentation.⁸⁶

Foshan Shunde continues to argue that the Department must account for the fact that it shipped multiple containers on one bill of lading. Foshan Shunde further asserts that most of the export documentation included in the *Doing Business: India* study was prepared and submitted by exporters themselves rather than by a broker.⁸⁷ Foshan Shunde contends that an exporter and a broker including several containers on a single bill of lading, “streamlines” the document preparation process and lowers brokerage and handling costs.⁸⁸

Foshan Shunde further disputes the Department’s Draft Redetermination conclusion that Foshan Shunde culled its brokerage and handling argument from a small group of sales. Foshan Shunde notes that the Department itself selected the sales examined at verification which formed the basis of Foshan Shunde’s proposed division of brokerage and handling costs by 6.2.

Department’s Position:

In this final redetermination, we continue to maintain that the World Bank study is a comprehensive measurement of brokerage and handling expenses, and that the ratio of bills of lading is not a separately identified line item in the World Bank’s study. As we argued in the Draft Redetermination, the World Bank study considers each procedure related to exporting as

⁸⁵ See Foshan Shunde’s June 26, 2014 letter at 6 citing *Doing Business* 2010 at 91-92. These assumptions are that the company 1) has 60 employees, 2) is located in the economy’s largest city, 3) does not operate in an export processing zone or an industrial estate with special export or import privileges, 4) is domestically owned with no foreign ownership, and 5) exports more than ten percent of its sales. The report further assumes that the traded goods 1) travel in a dry cargo 20-foot full container load, 2) weigh ten tons and are valued at \$20,000, 3) that the product is not hazardous, does not include military items, require refrigeration or any other special environment, and 4) the shipment does not require any special phyto sanitary or environmental safety standards other than accepted industry standards.

⁸⁶ See Foshan Shunde’s June 26, 2014 letter at 6.

⁸⁷ *Id.* at 6-7.

⁸⁸ *Id.* at 7.

well as the associated time and cost associated with exporting each container.⁸⁹ Thus, we view the World Bank study as comprehensive. Additionally, because it considers each separate activity associated with exporting, we continue to consider the World Bank study to be a reasonable representation of Foshan Shunde's brokerage and handling expense. We find no basis from our review of the *Doing Business: India* study to support the division of brokerage and handling expenses by 6.2 as advocated by Foshan Shunde.

As noted in the Draft Redetermination, the integration of the number of bills of lading issued by Foshan Shunde into the *Doing Business* study is beyond the scope of both the *Doing Business* study and the Department's antidumping analysis.⁹⁰ Moreover, in weighing which record data to use as a surrogate value for a particular input used by a respondent in the production of subject merchandise, the Department must determine which evidence represents the "best available information."⁹¹ The Department considers several criteria as part of this analysis, including whether the data are from an approved surrogate country, and are product-specific, representative of a broad market average, publicly available, contemporaneous with the period of review, and free of taxes and duties.⁹² Also, as noted in *Glycine from the PRC*, "{The Department} undertakes its analysis of valuing the {factors of production} on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry."⁹³ Additionally, within this general framework, we note that the statute "accords Commerce wide discretion in the valuation of factors of production in the application of {the

⁸⁹ See Draft Redetermination at 20.

⁹⁰ *Id.* at 11-14.

⁹¹ 19 U.S.C. § 1677b(c)(1)(B).

⁹² See, e.g., *Polyester Stable Fiber from China*, and accompanying Issues and Decision Memorandum at Comment 1.

⁹³ See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) and accompanying Issues and Decision Memorandum at Comment 1) (*Glycine from the PRC*).

statute's} guidelines.”⁹⁴ Similarly, the Federal Circuit has noted that “the process of constructing foreign market value for a producer in a nonmarket economy country is difficult and necessarily imprecise.”⁹⁵ Based upon the foregoing, we continue to determine that the World Bank study used in this final redetermination satisfies the criteria referenced above. These brokerage and handling data are publicly available, use India as a source, are representative of broad export activity in India, are contemporaneous with the period of review, and are free of taxes and duties.

Finally, we continue to find inapposite Foshan Shunde's reliance on the bills of lading examined by the Department at verification. Our verification of Foshan Shunde was never intended as either an evaluation of the methodology employed by the World Bank or as an itemized examination of the number of bills of lading that the World Bank considered in its *Doing Business: India* study. Rather, the verification exhibits referenced by Foshan Shunde were part of a different and far more limited exercise in which the Department sought to determine the type and nature of movement expenses incurred by Foshan Shunde on its United States sales and not the number of containers it shipped per bill of lading. As such, the Department continues to reject Foshan Shunde's request for an adjustment based on this small set of sales documentation.

Comment 3: Zeroing

Foshan Shunde argues that the Department has improperly relied on *Union Steel*, as its authority for zeroing in NME cases. Foshan Shunde asserts that such zeroing creates “artificial

⁹⁴ See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also *Jinan Yipin Corp. v. United States*, 971 F. Supp. 2d 1296, 1314 (Ct. Int'l Trade 2014) (upheld the Department's decision not to filter data set further due to the Department's concern that filtering could potentially distort the agency's surrogate value calculation).

⁹⁵ *Id.*

margins by saddling NME respondents with a single normal value based on a single POR-wide cost.”⁹⁶ Foshan Shunde asserts that there are “massive differences” between the methodologies employed in NME and ME reviews.⁹⁷ Foshan Shunde also contends that “all of the permutations” between how normal value and export price are determined in NME and ME cases were not addressed in *Union Steel*.⁹⁸ Foshan Shunde further argues that the monthly comparisons in ME cases differentiate ME case work from the 12-month average normal values encountered in NME cases.⁹⁹ Further, Foshan Shunde asserts that the Court understood ME reviews to be reflective of monthly weighted averages, while NME reviews are based on 12-month normal value averages.¹⁰⁰

Department’s Position:

We continue to maintain that *Union Steel* applies to both ME and NME cases. As noted in the Draft Redetermination, in *Union Steel*, the Department explained that its use of zeroing in administrative reviews, but not in investigations, is partly based on the different comparison methodologies used in each proceeding.¹⁰¹ Moreover, the distinction between the A-to-A and the A-to-T methodologies are not affected by whether the basis of normal value is ME or NME. Rather, as the Department further explained in *Union Steel*, the A-to-A comparison methodology used in investigations is useful for examining a respondent’s overall pricing behavior. However, once the order is in place, the A-to-T comparison methodology permits greater specificity to determine pricing behavior for individual transactions.¹⁰² This distinction remains true regardless of the basis for calculating normal value. As also noted in *Union Steel*, the greater

⁹⁶ See Foshan Shunde’s June 26, 2014 letter at 8.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 9.

¹⁰⁰ *Id.* at 9-10.

¹⁰¹ See *Union Steel* at 1106.

¹⁰² *Id.* at 1108.

specificity afforded through the A-to-T methodology furthers the transactional accuracy interest in the administrative review.¹⁰³ The Court further found in *Union Steel* that the Department's distinction was supported by the statute and that in investigations "averages over a broad period of time are compared to other broad averages."¹⁰⁴ Moreover, the Court stated that when it comes to determining review rates, it is reasonable for the agency to look for more accuracy, which it achieves in some measure through monthly averaging and through zeroing.¹⁰⁵

The Court in *Union Steel* then looked to the Department's explanation that the A-to-A methodology justifies not zeroing for reasons that are inapplicable to A-to-T comparisons. Specifically, the Court recognized that when using A-to-A comparisons, transactions are divided into "averaging groups"¹⁰⁶ whereby the Department calculates a comparison result for each averaging group, and averages together high and low export prices within the group. In such a methodology, the export prices above normal value thus offset those below normal value within the averaging group.¹⁰⁷ The Department then aggregates the results of the comparison for each averaging group to calculate a weighted average dumping margin.¹⁰⁸ The Court found that this comparison methodology results in masking of individual transaction prices that are below normal value by normal value prices above transaction prices in the same averaging group.¹⁰⁹

¹⁰³ *Id.*

¹⁰⁴ *Id.* This passage is cited by Foshan Shunde at page 9 of its June 26, 2014 letter.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* Transactions are divided into averaging groups on the basis of physical characteristics and level of trade for the purpose of price comparison. When calculating the average export price or constructed export price, the Department calculates a comparison result for each averaging group, and averages together high and low export prices within the group. Thus, those export prices above normal value offset those below normal value within the averaging group. The Department then aggregates the results of the comparison for each averaging group to calculate a weighted average dumping margin.

¹⁰⁷ *Id.* at 1108.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

However, when the Department employs the A-to-T comparison method used in administrative reviews, it compares the export price (or constructed export price) for a particular export transaction with “an average normal value for comparable sales of foreign like products within the averaging group.”¹¹⁰ Therefore, for specific export transactions, the Department calculates a comparison result which establishes the amount that the transaction is priced at less than its normal value.¹¹¹ The Court found in *Union Steel* that unlike the use of averaging groups for export prices in investigations, the Department “does not average export transaction prices before comparing the export price (or constructed export price) to normal value.”¹¹² The Court also found that the Department uses a single export transaction price and aggregates the transaction-specific comparison result and thus, the A-to-T comparison result reveals individual dumping.¹¹³

The Court in *Union Steel* concluded that the Department’s differing interpretation is reasonable because the comparison methodologies compute dumping margins in different ways and are used for different reasons.¹¹⁴ In A-to-A comparisons, as used in investigations, “Commerce examines average export prices, and zeroing is not necessary because high prices offset low prices within each averaging group.”¹¹⁵ When “examining individual export transactions, using the average-to-transaction comparison methodology, prices are not averaged and zeroing reveals masked dumping.”¹¹⁶ The Court concluded that the A-to-T methodology ensures that the amount of antidumping duties assessed better reflects the results of each A-to-T comparison. Moreover, the Court recognized in *Union Steel* that the Court has previously

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 1109.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

recognized interest in “using individual U.S. prices in calculating dumping margins” as it allows the Department to identify masked dumping.¹¹⁷

In summary, *Union Steel* demonstrates the Federal Circuit’s recognition that the use of the A-to-T methodology in administrative reviews is reasonable because the examination of individual export transactions, as opposed to averaging the export transactions, allows the Department to further its recognized interest in greater specificity to determine pricing behavior for individual transactions and to identify masked dumping in administrative reviews. The Court’s reference to “monthly averaging” is provided as an example of how the Department achieves some accuracy in its calculations in administrative reviews but it is not the central or the decisive finding that led to the Court’s conclusion that using zeroing when using the A-to-T methodology is reasonable to identify masked dumping. Rather, the Court’s finding that the A-to-A methodology masks dumping by averaging export prices was the basis for the Court’s finding.

Moreover, the Federal Circuit recognized that to use zeroing or to not use zeroing reasonably reflects the “unique goals of the differing methodologies.” This is true regardless of the basis of normal value. Thus, the Court’s focus in *Union Steel* was on the methodologies, A-to-A compared to A-to-T, and the manner in which the normal value is compared to export prices (or constructed export prices) rather than upon the basis of how normal value is calculated. Finally, the Court’s recognition that the Department “does not average export transaction prices before comparing the export price (or constructed export price) to normal value” demonstrates that the Court recognized that the use of a single export transaction price reveals individual

¹¹⁷ *Id.*, citing *Koyo Seiko Co. Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994).

dumping.¹¹⁸ We further determine that this methodology applies in both NME proceedings and ME proceedings, and that the use of individual transaction prices is consistent with both NME and ME proceedings wherein the Department seeks to achieve greater specificity in determining whether sales are made at less than fair value.

Comment 4: Foshan Shunde and Since Hardware Allegation of Procedural Irregularities

Foshan Shunde and Since Hardware allege that this third redetermination “has been marred by procedural irregularities” that have disadvantaged Foshan Shunde.¹¹⁹ Foshan Shunde and Since Hardware contend that they have been given an inadequate period of time to consider the Draft Redetermination and the proprietary information accompanying the Draft Redetermination.¹²⁰ Foshan Shunde and Since Hardware aver that the time deadlines set by the Court do not excuse the lack of time extended by the Department to comment on the Draft Redetermination. Foshan Shunde and Since Hardware contend that the Department should have petitioned the Court for additional time “long before” the due date for filing this redetermination with the Court.¹²¹ Foshan Shunde and Since Hardware both contend that they have been disadvantaged by the short comment period that the Department has afforded to them.

Foshan Shunde and Since Hardware further assert that the Department “considered a very lengthy and detailed legal argument and factual submission of the petitioner that was not filed on the Department’s record and without prior notice to Foshan Shunde and the Court.”¹²² Foshan Shunde and Since Hardware contend that they have been prejudiced by Petitioner’s May 15,

¹¹⁸ *Id.*

¹¹⁹ See Foshan Shunde and Since Hardware’s June 27, 2014 letter at 2.

¹²⁰ *Id.* at 2. The Draft Redetermination was released to Foshan Shunde and Since Hardware on June 23, 2014. The Business Proprietary information contained referenced in the Draft Redetermination was released on June 25, 2014.

¹²¹ *Id.*

¹²² *Id.*

2010 Motion for Rehearing and speculate that Petitioner's Motion for Rehearing might have caused a delay in presenting the draft results of redetermination to interested parties.¹²³

Department's Position:

The comment period set forth in this redetermination has been governed by the strict time constraints established by the Court. In this regard, we note that the Court denied the Department's request for additional time beyond the July 8, 2014 deadline. Moreover, in its June 25, 2014 order, which established the July 8, 2014 deadline for filing this redetermination, the Court indicated its belief that the "full focus of the parties and the Court should be on concluding the balance of this litigation as expeditiously as possible."¹²⁴ The Court further indicated that it was "begrudgingly" providing "a small amount of additional time" for the Department to file its remand results and for parties to file a scheduling order for the submission on those results.¹²⁵ The comment period extended in this redetermination is, thus, consistent with the Court's expressed wish that the Department complete this redetermination as "expeditiously" as possible.

We also dispute Foshan Shunde's and Since Hardware's assertion that in filing its results of redetermination, the Department improperly based its determination on information contained in Petitioner's Motion for Rehearing. As noted in our response to Comment 1, in filing this redetermination, we relied upon information which we independently researched and put on the record of this proceeding. Moreover, throughout this redetermination, the Department fully explained its basis for each of the positions that it has adopted. Foshan Shunde's and Since Hardware's assertion that it has been prejudiced before the Department by virtue of Petitioner's May 15, 2010 Motion for Rehearing is without merit.

¹²³ *Id.*

¹²⁴ *See Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No 11-00106, June 25, 2014.

¹²⁵ *Id.*

Comment 5 Alternative Methods of Calculating Brokerage and Handling Expense Proposed by Foshan Shunde and Since Hardware

Foshan Shunde and Since Hardware assert that having reconsidered brokerage and handling issues of interest to the Petitioner, the Department “should have solicited the views of the respondents, Foshan Shunde and Since Hardware, on issues of concern to them regarding the brokerage and handling surrogate value. Specifically, Foshan Shunde and Since Hardware aver that the Department should disregard the World Bank’s *Doing Business* series as an inappropriate source of brokerage and handling data. Foshan Shunde and Since Hardware argue that the *Doing Business* data are “for a one-time shipment of the smallest international unit” and is unrepresentative of Foshan Shunde’s “commercial and economic reality.”¹²⁶ Foshan Shunde and Since Hardware further assert that if the Department continues to use *Doing Business: India* data, and consistent with the approach taken in the 2011-2012 review of *Multilayered Wood Flooring from the PRC*,¹²⁷ the Department must use a 10,000 kilogram weight regardless of the respondent’s “economic reality.” Foshan Shunde and Since Hardware further argue that consistent with the approach taken in *Multilayered Wood Flooring from the PRC*, the Department should adjust brokerage and handling costs for the letter of credit that Foshan Shunde and Since Hardware suggest is embedded within brokerage and handling costs.¹²⁸

Department’s Position

In this redetermination, and as directed by the Court, we have utilized the shipment weight reported by Since Hardware to calculate the brokerage and handling expense.¹²⁹ We

¹²⁶ *Id.* at 4.

¹²⁷ See *Multilayered Wood Flooring from People’s Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 26712 (May 9, 2014) and accompanying Issues and Decision Memorandum at Comment 4. (*Multilayered Layer Wood Flooring*).

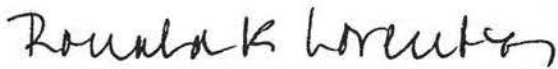
¹²⁸ See Foshan Shunde’s and Since Hardware’s June 27, 2014 letter at 5 citing *Multilayered Wood Flooring from the PRC* and accompanying Issues and Decision Memorandum at Comment 4.

¹²⁹ See Draft Redetermination at 14-15.

further note that Foshan Shunde's and Since Hardware's argument concerning adjustments for letters of credit embedded within the *Doing Business: India* data is not at issue in this redetermination. As such, we have not considered this issue in this redetermination. Moreover, we note that in the Draft Redetermination, we based our calculation of brokerage and handling on information that is on the record of this review. Finally, we note that the Court approved the Department's use of World Bank data,¹³⁰ and rejected Foshan Shunde's argument concerning embedded letter of credit costs because Foshan Shunde based that claim upon import data, not export data.¹³¹

Results of Redetermination

As a result of this redetermination, Foshan Shunde's margin has changed from 22.46 percent to 18.88 percent. Since Hardware's margin remains at 83.83 percent. Upon a final and conclusive decision in this case, the Department will instruct U.S. Customs and Border Protection to liquidate appropriate entries for the August 1, 2008, through July 31, 2009, period of review consistent with our final results of redetermination pursuant to Court remand.



Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

July 8, 2014
Date

¹³⁰ See *Since Hardware II* at 26-27.

¹³¹ *Id.* at 28.

Attachment 1

Public Summary of Brokerage and Handling Calculation

In these Final Results of Redetermination we have calculated a revised brokerage and handling amount using the following formula:

$$\text{Brokerage and Handling} = ((\$229.76 + \$78.18)/W) + ((\$166*1.5)/W).$$

In this formula, “\$229.76” represents the average document preparation charges for the 17 subnational ports identified in the *2010 Doing Business: India* World Bank study; “\$78.18” represents the average customs clearing component for these 17 subnational ports; while “\$166.00” represents the average ports and terminal handling component for these 17 subnational ports. “1.5” represents the 50 percent increase assigned to use of a 40-foot container relative to a 20-foot container. “W” represents the shipment weight reported by Foshan Shunde, which is [] kg. (See Foshan Shunde’s November 13, 2009 Section A Response at Exhibit A-6; see also HPI’s November 15, 2010 Case Brief at 17.)