U.S. Customs and Border Protection

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOMEN'S PANTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of women's pants.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of women's pants (style GTGH-24388) under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 58, No. 43, on October 30, 2024. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 5, 2025.

FOR FURTHER INFORMATION CONTACT: Parisa Ghazi, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and

related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 43, on October 30, 2024, proposing to modify one ruling letter pertaining to the tariff classification of women's pants. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") N251623, dated April 16, 2024, CBP classified women's pants styles JSWK-10872 and GTGH-24388 in heading 6104, HTSUS Annotated ("HTSUSA"), specifically in subheading 6104.62.2006, HTSUSA, which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of cotton: Other." CBP has reviewed NY N251623 and has determined the ruling letter to be in error with respect to the tariff classification of style GTGH-24388. It is now CBP's position that women's pants style GTGH-24388 are properly classified, in heading 6210, HTSUS, specifically in subheading 6210.50.75, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Other: Having an outer surface impregnated, coated, covered or laminated with rubber or plastics material which completely obscures the underlying fabric."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N251623 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter

("HQ") H325600, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H325600
February 14, 2025
OT:RR:CTF:FTM H325600 PJG
CATEGORY: Classification
TARIFF NO.: 6210.50.75

MS. KIM O'BYRNE-ROZMAN
JONES JEANSWEAR GROUP INC.
180 RITTENHOUSE CIRCLE
BRISTOL, PENNSYLVANIA 19007

RE: Modification of NY N251623; Tariff classification of women's pants

DEAR MS. O'BYRNE-ROZMAN:

This letter is in reference to New York Ruling Letter ("NY") N251623, dated April 16, 2014, issued to you concerning the tariff classification of two styles of women's pants under the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically, in NY N251623, U.S. Customs and Border Protection ("CBP") classified styles JSWK-10872 and GTGH-24388. This decision concerns only the tariff classification of style GTGH-24388.

In NY N251623, CBP classified style GTGH-24388 in subheading 6104.62.2006, HTSUS Annotated ("HTSUSA"), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of cotton: Other." We have reviewed NY N251623 and determined it to be in error with respect to the tariff classification of style GTGH-24388. For the reasons set forth below, we are modifying NY N251623.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on October 30, 2024, in Volume 58, Number 43, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY N251623, the women's pants style GTGH-24388 is described as follows:

> Style GTGH-24388 is a woman's pant constructed from two different fabrics. The front panels are constructed from 100% cotton woven fabric coated with PVC. The back panels are constructed from 78% cotton, 17% nylon, and 5% spandex knit fabric. The pull-on pants feature a wide elasticized waistband with a button closure and a zipper, six belt loops, two faux front pockets at the sides, two patch pockets in the back, and hemmed leg openings. The garment extends from the waist to the ankles.

ISSUE:

Whether the women's pants (style GTGH-24388) are classified under heading 6104, HTSUS, which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted," heading 6204, HTSUS, which provides for "Women's or girls' suits,

ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear)," or under heading 6210, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907."

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States ("HTSUS") is made in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The 2025 HTSUS provisions under consideration are as follows:

6104 Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted:

6204 Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):

6210 Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907:

GRI 2 provides as follows:

(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3(a) and (b) provide as follows:

When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings

are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Note 7 to Section XI, HTSUS, provides as follows:

7. For the purposes of this section, the expression "made up" means:

(a) Cut otherwise than into squares or rectangles;

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

(c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other subparagraph of this note, but excluding fabrics the cut edges of which have been prevented from unraveling by hot cutting or by other simple means;

(d) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;

(e) Cut to size and having undergone a process of drawn thread work;

(f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or

(g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

Note 2(a)(1) to Chapter 59, HTSUS, provides as follows:

2. Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

(1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;

Note 1 to Chapter 62, HTSUS, states that "[t]his chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted articles (other than those of heading 6212)."

Note 6 to Chapter 62, HTSUS, states that "[g]arments which are, *prima facie*, classifiable both in heading 6210 and in other headings of this chapter, excluding heading 6209, are to be classified in heading 6210."

Additional U.S. Note 3 to Chapter 62, HTSUS, provides, in part, as follows:

(a) When used in a subheading of this chapter or immediate superior text thereto, the term 'recreational performance outerwear' means trousers (including, but not limited to, ski or snowboard pants, and ski or snowboard pants intended for sale as parts of ski-suits), coveralls, bib and brace overalls, jackets (including, but not limited to, full zip jackets, ski jackets and ski jackets intended for sale as parts of ski-suits), windbreakers and similar articles (including padded, sleeveless jackets), the foregoing of fabrics of cotton, wool, hemp, bamboo, silk or manmade fibers, or a combination of such fibers; that are either water resistant within the meaning of additional U.S. note 2 to this chapter or treated with plastics, or both; with critically sealed seams, and with 5 or more of the following features (as further provided herein):

(i) insulated for cold weather protection;
(ii) pockets, at least one of which has a zippered, hook and loop, or other type of closure;
(iii) elastic, draw cord or other means of tightening around the waist or leg hems, including hidden leg sleeves with a means of tightening at the ankle for trousers and tightening around the waist or bottom hem for jackets;
(iv) venting, not including grommet(s);
(v) articulated elbows or knees;
(vi) reinforcement in one of the following areas: the elbows, shoulders, seat, knees, ankles or cuffs;
(vii) weatherproof closure at the waist or front;
(viii) multi-adjustable hood or adjustable collar;
(ix) adjustable powder skirt, inner protective skirt or adjustable inner protective cuff at sleeve hem;
(x) construction at the arm gusset that utilizes fabric, design or patterning to allow radial arm movement; or
(xi) odor control technology

The term 'recreational performance outerwear' does not include occupational outerwear.

(b) For purposes of this note, the following terms have the following meanings:

(i) the term 'treated with plastics' refers to textile fabrics impregnated, coated, covered or laminated with plastics, as described in note 2 to chapter 59.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the "official interpretation of the Harmonized System" at the international level. *See* 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). While neither legally binding nor dispositive, the ENs "provide a commentary on the scope of each heading" of the HTSUS and are "generally indicative of [the] proper interpretation" of these headings. *See id.*

The EN to GRI 3(b) states, in pertinent part:

(VI) This second method relates only to:
(i) Mixtures.
(ii) Composite goods consisting of different materials.
(iii) Composite goods consisting of different components.
(iv) Goods put up in sets for retail sales.
It applies only if Rule 3 (a) fails.

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are:

(1) Ashtrays consisting of a stand incorporating a removable ash bowl.

(2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

* * *

The EN to 61.03(D) sates that the term "'Trousers' means garments which envelop each leg separately, covering the knees and usually reaching down to or below the ankles; these garments usually stop at the waist; the presence of braces does not cause these garments to lose the essential character of trousers."

The EN to 61.04 states, in relevant part, that "[t]he provisions of the Explanatory Note to heading 61.03 apply *mutatis mutandis* to the articles of this heading."

The EN to 62.04 provides as follows:

The provisions of the Explanatory Note to heading 61.04 apply, *mutatis mutandis*, to the articles of this heading.

However, the heading **does not cover** garments made up of fabrics of heading 56.02, 56.03, 59.03, 59.06 or 59.07 (**heading 62.10**).

The subject garment is constructed of two different fabrics, specifically, the front panels are constructed from 100% cotton woven fabric coated with polyvinyl chloride ("PVC")[1] and the back panels are constructed from 78% cotton, 17% nylon and 5% spandex knit fabric. The EN to 61.03(D) defines the term "trousers" to mean "garments which envelop each leg separately, covering the knees and usually reaching down to or below the ankles." In

[1] Polyvinyl chloride ("PVC") is a plastic that is classified in heading 3904, HTSUS. Note 1 to Chapter 39, HTSUS, provides as follows: "Throughout the tariff schedule the expression "plastics" means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence."

accordance with the EN to 61.04, this definition applies *mutatis mutandis* to the articles of heading 61.04. The subject garments are trousers because they meet the definition provided in the EN to 61.03(D), in particular, they envelop each leg separately and cover the knees and reach the ankles.

Upon review, we find that the 100% cotton woven front panels of the subject trousers are described by heading 6204, which provides, in relevant part, for woven women's trousers. The front panels are also coated with PVC. Textile fabrics, impregnated, coated, covered or laminated with plastics, are classified in heading 5903, HTSUS, provided that they meet the requirements of Note 2(a)(1) to Chapter 59, HTSUS, in particular, that the coating on the textile fabric must be visible with the naked eye, with no account taken of any resulting change of color. Upon review of the photographs of the subject trousers, we have concluded that the front panels are visibly coated with PVC, because the coating can be seen with the naked eye. Therefore, we find that the coated portion of the trousers (the front panels) is composed of fabrics of heading 5903, HTSUS, and as such is also provided for in heading 6210, HTSUS, which covers, in relevant part, garments made up of fabrics of heading 5903. The expression "made up" is applicable in this instance because the trousers are assembled by sewing, pursuant to Note 7(f) to Section XI, HTSUS. The back panels of the trousers, constructed from 78% cotton, 17% nylon, and 5% spandex knit fabric, are described by heading 6104, HTSUS, which provides, in relevant part, for women's trousers, knitted or crocheted.

Based on the forgoing, the trousers are classifiable in three different headings, specifically, heading 6104, HTSUS, which provides, in relevant part, for knitted women's trousers, heading 6204, HTSUS, which provides, in relevant part, for woven women's trousers, and heading 6210, HTSUS, which provides, in relevant part, for garments made up of fabrics of heading 5903, HTSUS. Note 6 to Chapter 62, HTSUS, requires that "[g]arments which are, *prima facie*, classifiable both in heading 6210 and in other headings of this chapter, excluding heading 6209, are to be classified in heading 6210." Accordingly, the subject trousers cannot be classified in heading 6204, HTSUS. The trousers are still classifiable in headings 6210, HTSUS, or heading 6104, HTSUS.

GRI 2(b) states in relevant part that "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3(a) states that, "[w]hen, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."

Pursuant to GRI 3(b) "[w]hen, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which

gives them their essential character, insofar as this criterion is applicable."

EN (IX) to GRI 3(b) states that "composite goods" means goods made up of different components wherein the "components are attached to each other to form a practically inseparable whole" and goods "with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts." The subject trousers are composite goods because they are made up of a woven front panel and a knit back panel that are attached to each other by sewing and form the whole trousers. The two panels would not normally be offered for sale in separate parts. As composite goods, the trousers must be classified using GRI 3(b).

When considering the classification of apparel made up of both woven and knit fabrics, guidance may be found in HQ Memorandum 084118 (April 13, 1989), which has been cited in numerous CBP rulings, *see e.g.*, HQ W968350, dated September 28, 2007, and states in pertinent part:

> For upper or lower body garments, if one component exceeds 60 percent of the visible surface area, that component will determine the classification of the garment unless the other component:
> (1) forms the entire front of the garment; or
> (2) provides a visual and significant decorative effect (e.g., a substantial amount of lace); or
> (3) is over 50 percent by weight of the garment; or
> (4) is valued at more than 10 times the primary component.
>
> If no component comprises 60 percent of the visible surface area, or if any of the above four listed conditions are present, classification will be according to GRI 3(b) or 3(c), as appropriate.
>
> ...
>
> GRI 3(c) should not be used unless it cannot be clearly determined which component gives the garment its essential character.

In this instance, no component exceeds 60 percent of the visible surface area, and the woven fabric constitutes the entire front of the trousers. Accordingly, consistent with the requirements of GRI 3(b) and the guidance in HQ memorandum 084118, we need to first consider whether the essential character of the garment can be identified.

The EN to GRI 3(b) (VIII) provides that when performing an essential character analysis, the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on "essential character" for purposes of classification under GRI 3(b). *See Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int'l Trade 2005); and *Home Depot USA, Inc.*, 427 F. Supp. 2d at 1295–1356. "[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *Home Depot USA, Inc.*, 427 F. Supp. 2d at 1293 (quoting *A.N. Deringer, Inc.*, 66 Cust. Ct. at 383). In particular, in *Home Depot USA, Inc.*, the court stated "[a]n essential character inquiry requires a fact intensive analysis." *Id*. at 1284. In the instant case, the front and back panel are equally important with respect to making the lower body garment "what it is," specifically, trousers.

However, the PVC coated woven front panel of the trousers gives the garment a faux leather appearance. In several previous classification decisions concerning garments constructed of two different fabrics for the front and back panels, CBP has determined that the front panel imparts the essential character of the garment. *See* HQ 955640 (March 22, 1994) (stating that the front silk panel of the men's vest "has the greatest visual impact and is the primary motivation for the purchasing of [the] particular garment by a consumer"); and HQ 958122 (August 21, 1995) (stating that the woven wool front panel of an upper body garment determined the essential character rather than the knit wool back portion because "[i]t is the front part of the garment that is instantly visible and is generally the most important feature of a garment"). Similarly, in this instance, the woven front panel of the trousers is instantly visible and has the greatest visual impact by creating a faux leather pant look. Accordingly, the woven front panel imparts the essential character of the trousers. The garment is therefore classified in heading 6210, HTSUS.

At the six-digit subheading level, we must determine if the subject merchandise is "recreational performance outerwear," which is defined by Additional U.S. Note 3(a) to Chapter 62, HTSUS. The front panel is treated with plastics within the meaning of Additional U.S. Note 3(b) to Chapter 62, HTSUS, because the front panel is a textile fabric that is coated with plastics, consistent with Note 2 to Chapter 59, HTSUS, as previously discussed. To be considered "recreational performance outerwear," the garment also needs to meet 5 or more of the features listed in Additional U.S. Note 3(a) to Chapter 62, HTSUS. The subject merchandise does not have any of those listed features. Accordingly, the subject garment cannot be classified as a "recreational performance outerwear."

Since the front panel is constructed of 100% cotton woven fabric, the appropriate subheading for classifying the merchandise is subheading 6210.50.75, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Other: Having an outer surface impregnated, coated, covered or laminated with rubber or plastics material which completely obscures the underlying fabric."

HOLDING:

By application of GRI 3(b) and 6, the subject women's pants are classified under heading 6210, HTSUS, and specifically, in subheading 6210.50.75, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Other: Having an outer surface impregnated, coated, covered or laminated with rubber or plastics material which completely obscures the underlying fabric." The 2025 column one, general rate of duty is 3.3 percent *ad valorem*.

Duty rates are provided for convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at: https://hts.usitc.gov/.

EFFECT ON OTHER RULINGS:

NY N251623, dated April 16, 2014, is MODIFIED.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; notice of open Federal Advisory Committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, March 5, 2025, in Atlanta, Georgia. The meeting will be open for the public to attend in-person or via webinar. The in-person capacity is limited to 50 persons for public attendees.

DATES: The COAC will meet on Wednesday, March 5, 2025, from 1 p.m. to 5 p.m. Eastern Standard Time (EST). Please note the meeting may close early if the committee has completed its business. Registration to attend in-person and comments must be submitted no later than February 28, 2025.

ADDRESSES: The meeting will be held at the Sam Nunn Building located at 61 Forsyth Street SW, Atlanta, GA 30303 in Conference Rooms B & C. For virtual participants, the webinar information will be posted by 5 p.m. EST on March 4, 2025, at *https://www.cbp.gov/trade/stakeholder-engagement/coac.* For information or to request special assistance for the meeting, contact Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440, as soon as possible.

Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for Docket Number USCBP–2025–0004. To submit a comment, click the "Comment" button located on the top-left hand side of the docket page.
- *Email: tradeevents@cbp.dhs.gov.* Include Docket Number USCBP–2025–0004 in the subject line of the message.

Comments must be submitted in writing no later than February 28, 2025, and must be identified by Docket No. USCBP–2025–0004. All submissions received must also include the words "Department of Homeland Security." All comments received will be posted without change to *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings* and *www.regulations.gov.* Therefore, please refrain from including any personal information you do not wish to be posted. You may wish to view the Privacy and Security Notice, which is available via a link on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229, (202) 344–1440; or Mr. George Bogden, Designated Federal Officer, at (202) 344–1440 or via email at *tradeevents@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, Title 5 U.S.C. ch. 10. The COAC provides advice to the Secretary of the Department of Homeland Security, the Secretary of the Department of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-Registration: Meeting participants may attend either in person or via webinar. All participants who plan to participate in-person must register using the method indicated below: For members of the public who plan to participate in person, please register via email at *tradeevents@cbp.dhs.gov.* Include COAC Meeting Registration in the subject line of the message. Please include your first and last name, and company in your request.

For members of the public who plan to participate in person, please register via email at *tradeevents@cbp.dhs.gov.* Include COAC Meeting Registration in the subject line of the message. Please include your first and last name, and company in your request.

For members of the public who plan to participate via webinar, the webinar information will be posted by 5 p.m. EST on March 4, 2025, at *https://www.cbp.gov/trade/stakeholder-engagement/coac.* Registration is not required to participate virtually.

The COAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Mrs. Latoria Martin at (202) 344–1440 as soon as possible.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

There will be a public comment period after each subcommittee update during the meeting on March 5, 2025. During the meeting, comments may be submitted via the trade events mailbox at *tradeevents@cbp.dhs.gov* or through the Microsoft Teams chat feature. Please note the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP

web page: *https://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Intelligent Enforcement Subcommittee will provide updates on the work completed and topics discussed in its working groups. The Antidumping/Countervailing Duty (AD/ CVD) Working Group will provide updates regarding its work and discussions on importer compliance with AD/CVD and other trade remedy measures and requirements. The Intellectual Property Rights (IPR) Process Modernization Working Group will provide updates concerning progress associated with its proposed recommendations specific to IPR enforcement and facilitation. The Forced Labor Working Group (FLWG) will submit proposed recommendations and provide updates on continued discussions regarding trade outreach and clarification of requirements. The FLWG will continue to provide CBP with input, as CBP rolls out a case management portal and a new version of the "Uyghur Forced Labor Prevention Act (UFLPA) U.S. Customs and Border Protection Operational Guidance for Importers". The Bond Working Group remained on hiatus status since the last public meeting.

2. The Next Generation Facilitation Subcommittee will provide updates on all its existing working groups. The Automated Commercial Environment (ACE) 2.0 Working Group was focused on a discussion on the ACE 2.0 high level roadmap and clarification on some of the proposed capabilities such as blanket entries and correction processes. The Broker Modernization Working Group (BMWG) remains dedicated to the enhancement of the end user experience and improving the administration of the Customs Broker Licensing Exam (CBLE). This quarter, the Modernized Entry Processes Working Group (MEPWG) continues its National Customs Automation Program (NCAP) discussions and will provide updates on its efforts concerning the reconciliation test. The MEPWG will provide updates regarding areas where CBP could provide further guidance on the Broker Cybersecurity Incident Procedures in the form of Frequently Asked Questions. The remaining working group, the Customs Interagency Industry Working Group (CIIWG), was not active this past quarter but will provide a report on topics that the working group will focus on in the coming quarter.

3. The Secure Trade Lanes Subcommittee will provide updates on its seven active working groups: the Centers Working Group, the Cross-Border Recognition Working Group, the De Minimis Working

Group, the Export Modernization Working Group, the FTZ/ Warehouse Working Group, the Pipeline Working Group, and the Trade Partnership and Engagement Working Group. The proposed recommendations presented by the De Minimis Automation Task Force in the December meeting will be put forward for a vote in the March meeting. These proposed recommendations could not be voted on at the December meeting, due to the lack of quorum for COAC. The Export Modernization Working Group met to discuss the rail Electronic Export Manifest after much anticipation for its release. The Export Modernization Working Group continues the discussion on progressive filing in the export environment. The Drawback Task Force, within the Export Modernization Working Group, met to discuss the general rulings and the drawback desk review process and hopes to submit proposed recommendations this quarter surrounding the streamlining of the manufacturing rulings process. The Centers Working Group continues to meet within the Structure and Operations Sub-Working Groups. The Centers Working Group continues to evaluate previous the recommendations that were put forward and will determine if any additional proposed recommendations may come from that review and with new topics that are discussed within the Sub-Working Groups. The FTZ/Warehouse Working Group continues to review 19 CFR part 146 and intends to have proposed recommendations for review surrounding ACE functionality for the March public meeting. The Pipeline Working Group has not met yet this quarter and will not have any proposed recommendations. The Cross-Border Recognition Working group has not met this quarter and will finalize the evaluation for the Statement of Work to determine next steps.

Meeting materials will be available on February 24, 2025, at: *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

GEORGE BOGDEN,
Executive Director,
Office of Trade Relations.

U.S. Court of International Trade

Slip Op. 25–15

PT. ZINUS GLOBAL INDONESIA, Plaintiff, and BROOKLYN BEDDING, LLC, CORSICANA MATTRESS COMPANY, ELITE COMFORT SOLUTIONS, FXI, INC., INNOCOR, INC., KOLCRAFT ENTERPRISES INC., LEGGETT & PLATT, INCORPORATED, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AND UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, Consolidated Plaintiffs, v. UNITED STATES, Defendant, and BROOKLYN BEDDING, LLC, CORSICANA MATTRESS COMPANY, ELITE COMFORT SOLUTIONS, FXI, INC., INNOCOR, INC., KOLCRAFT ENTERPRISES INC., LEGGETT & PLATT, INCORPORATED, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AND UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge
Consol. Court No. 21–00277

[Sustaining the U.S. Department of Commerce's Second Final Results of Redetermination Pursuant to Court Order in the antidumping duty investigation of mattresses from Indonesia.]

Dated: February 18, 2025

J. David Park, *Henry D. Almond*, *Gina Marie Colarusso*, *Kang Woo Lee*, and *Lynn M. Fischer Fox*, of Arnold & Porter Kaye Scholer, LLP, Washington, D.C., for Plaintiff PT. Zinus Global Indonesia. With them on the brief was *Eric Johnson*.

Yohai Baisburd, *Nicole Brunda*, *Chase J. Dunn*, *Mary Jane Alves*, *Sarah E. Shulman*, *Thomas M. Beline*, and *Ulrika Kristin Skitarelic Swanson*, of Cassidy Levy Kent (USA) LLP, Washington, D.C., for Consolidated Plaintiffs and Defendant-Intervenors Brooklyn Bedding, LLC, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Inc., International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO.

L. Misha Preheim, Assistant Director, and *Kara M. Westercamp*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With them on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel on the brief was *David W. Richardson*, Senior Counsel, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce.

OPINION AND ORDER

Choe-Groves, Judge:

Before the Court is the U.S. Department of Commerce's ("Commerce") second remand redetermination in the antidumping duty investigation of mattresses from Indonesia, filed pursuant to the Court's Remand Order in *PT. Zinus Global Indonesia v. United States* ("*PT. Zinus II*"), 48 CIT __, 686 F. Supp. 3d 1349 (2024). *See Final Results of Redetermination Pursuant to Court Remand* ("*Second Remand Redetermination*"), ECF Nos. 87–1, 87–2; *see also Mattresses from Indonesia* ("*Final Determination*"), 86 Fed. Reg. 15,899 (Dep't of Commerce Mar. 25, 2021) (final affirmative determination of sales at less than fair value), accompanying Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Market Value Investigation of Mattresses from Indonesia ("IDM"), ECF No. 15–4.

In *PT. Zinus II*, the Court remanded for Commerce to reconsider its inclusion of mattresses in transit from Indonesia at the end of the period of investigation in the calculation of constructed export price and adjustments made to the selling expenses of Plaintiff PT. Zinus Global Indonesia's ("Plaintiff" or "Zinus Indonesia") parent company, Zinus Inc. ("Zinus Korea"). *PT. Zinus II*, 48 CIT at __, 686 F. Supp. 3d at 1354–57. Commerce addressed both issues on remand. *See Second Remand Redetermination*. Consolidated Plaintiffs and Defendant-Intervenors Brooklyn Bedding, LLC, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Inc., International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO ("Defendant-Intervenors") filed Defendant-Intervenors' Comments in Opposition to the Department's Remand Redetermination. Def.-Intervs.' Cmts. Opp'n Dep't's Remand Redetermination ("Def.-Intervs.' Br."), ECF Nos. 91, 92. Defendant United States ("Defendant") filed Defendant's Response to Comments on Second Remand Redetermination. Def.'s Resp. Cmts. Second Remand Redetermination ("Def.'s Br."), ECF Nos. 93, 94. Plaintiff filed Plaintiff's Comments in Support of Commerce's Second Remand Redetermination. Pl.'s Cmts. Supp. Commerce's Second Remand Redetermination ("Pl.'s Br."), ECF Nos. 95, 96. Defendant-Intervenors filed Defendant-Intervenors' Reply to Defendant's Comments on the Second Remand Redetermination. Def.-Intervs.' Reply Def.'s Cmts. Second Remand Redetermination ("Def.-Intervs.' Reply"), ECF Nos. 102, 103.

For the following reasons, the Court sustains Commerce's *Second Remand Redetermination*.

ISSUES PRESENTED

This case presents the following issues:

1. Whether Commerce's exclusion of in-transit mattresses from the calculation of constructed export price was in accordance with law and supported by substantial evidence; and
2. Whether Commerce's exclusion of Zinus Korea's selling expenses from the calculation of normal value was supported by substantial record evidence.

BACKGROUND

The Court presumes familiarity with the underlying facts and procedural history of this case and recites the facts relevant to the Court's review of the *Second Remand Redetermination*. *See PT. Zinus II*, 48 CIT at __, 686 F. Supp. 3d at 1352–54; *PT. Zinus Global Indonesia v. United States* ("*PT. Zinus I*"), 47 CIT __, __, 628 F. Supp. 3d 1252, 1258–59 (2023).

On March 30, 2020, an antidumping duty petition concerning imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam was filed with Commerce by Brooklyn Bedding, LLC, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Inc., the International Brotherhood of Teamsters, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO. Antidumping Countervailing Duty Pet. ("Petition") (Mar. 31, 2020), PR 1–4, CR 1–10.[1] In response to the Petition, Commerce initiated on April 24, 2020 an antidumping investigation on mattresses imported from Indonesia. *Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam*, 85 Fed. Reg. 23,002 (Dep't of Commerce Apr. 24, 2020) (initiation of less-than-fair-value investigations). The period of investigation was January 1, 2019 through December 31, 2019, the four most recent financial quarters prior to the filing of the March 2020 Petition. *Id.* at 23,003; Commerce's Decision Mem. Prelim. Affirmative Determination and Postponement Final Determination Less-Than-Fair-Value Investigation

[1] Citations to the administrative record reflect the public record ("PR"), public remand record ("PRR"), confidential record ("CR"), and confidential remand record ("CRR") document numbers filed in this case, ECF Nos. 39, 40, 76, 77, 97, 98.

Mattresses from Indonesia ("PDM") at 5, PR 226; *see also* 19 C.F.R. § 351.204(b)(1). Zinus Indonesia was selected as the sole mandatory respondent in the investigation. Less-Than-Fair-Value Investigation Mattresses Indonesia Resp. Selection Mem., PR 66, CR 32.

Because Plaintiff was unable to identify the country of origin of imported mattresses after merchandise entered Plaintiff's United States warehouse, Commerce applied a quarterly ratio sales methodology to determine the quantity of Zinus Indonesia's U.S. sales for purposes of calculating constructed export price. IDM at 8–9; PDM at 9–10; *see also* Commerce's Prelim. Determination Margin Calculation Zinus Indonesia at 1–3 (Oct. 27, 2020), PR 229, CR 258. The quarterly ratio was applied to the full universe of Zinus, Inc.'s ("Zinus U.S.") mattresses, including those mattresses that were in transit and had not yet entered the United States at the conclusion of the period of investigation. IDM at 8–9. Commerce calculated Zinus Indonesia's antidumping duty margin rate at 2.22 percent. *Final Determination*, 86 Fed. Reg. at 15,900.

The Court remanded for Commerce to explain and support its inclusion of mattresses in transit from Indonesia in its quarterly ratio calculations, Commerce's adjustments to the selling expenses of Zinus Korea, and Commerce's application of the Transactions Disregarded Rule. *PT. Zinus I*, 47 CIT at __, 628 F. Supp. 3d. at 1287–88. On remand, Commerce continued to include in-transit mattresses in its calculation of constructed export price and to exclude affiliated party transfer payments from its margin calculations. *Final Results of Redetermination Pursuant to Court Remand* ("*Remand Redetermination*"), ECF Nos. 59–1, 60–1. This Court held that information relating to Plaintiff's inventory was missing from the administrative record, and Commerce failed to comply with the requirements of 19 U.S.C. § 1677m(d) to notify Plaintiff of the deficiency and allow an opportunity to cure. *PT. Zinus II*, 48 CIT at __, 686 F. Supp. 3d at 1355–56. Defendant requested that Commerce's determination with respect to the exclusion of Zinus Korea's selling expenses be remanded to address deficiencies and contradictions in the administrative record. *Id.* at __, 686 F. Supp. 3d. at 1356–57. The Court sustained Commerce's application of the Transactions Disregarded Rule and remanded the remaining issues of Commerce's treatment of in-transit mattresses and Zinus Korea's selling expenses. *Id.* at __, 686 F. Supp. 3d at 1358.

On second remand, Commerce issued a supplemental questionnaire to Plaintiff. Remand Suppl. Questionnaire, PRR 1, CRR 1. The supplemental questionnaire requested Plaintiff to provide data on the

quantity and value of the mattresses in Zinus U.S.' inventory at the beginning and end of the period of investigation and Zinus Korea's indirect selling expenses. *Id.* Plaintiff provided a response to the supplemental questionnaire. Pl.'s Remand Suppl. Questionnaire Resp. ("Plaintiff's Supplemental Questionnaire Response" or "Pl.'s Suppl. Questionnaire Resp."), PRR 4–5, CRR 2–9. Defendant-Intervenors submitted comments in response to Plaintiff's Supplemental Questionnaire Response. Def.-Intervs.' Cmts. Pl.'s Remand Suppl. Questionnaire Resp. ("Defendant-Intervenors' Supplemental Questionnaire Comments" or "Def.-Intervs.' Suppl. Questionnaire Cmts."), PRR 11, CRR 11. Commerce released on April 19, 2024 its Draft Second Remand Redetermination. Draft Second Remand Redetermination, PRR 15, CRR 13. In the Draft Second Remand Redetermination, Commerce concluded that the quantity of mattresses in Zinus U.S.' inventory during the period of investigation exceeded the quantity of mattresses sold during the same period and that the in-transit mattresses from Indonesia did not enter Zinus U.S.' inventory during the period of investigation. *Id.* at 5–7. Commerce excluded the in-transit mattresses from its calculation and adjusted its quarterly ratio calculation to include only the specific model numbers produced and sold by Zinus Indonesia during the period of investigation. *Id.* at 6–8. Commerce also calculated a new variable representing U.S. indirect selling expenses incurred in Korea based on additional data provided by Plaintiff. *Id.* at 8–12. This variable was incorporated into the margin calculation but did not affect the results. *Id.* at 12. Based on these changes, Commerce calculated a weighted-average dumping margin of 2.35 percent. *Id.* at 13. Plaintiff and Defendant-Intervenors provided comments on the Draft Second Remand Redetermination. Pl.'s Cmts. Commerce's Draft Results Redetermination Pursuant Court Remand, PRR 22, CRR 18–19, 21; Def.-Intervs.' Cmts. Draft Results Redetermination, PRR 21, CRR 20.

In the *Second Remand Redetermination*, Commerce again changed its quarterly ratio methodology for allocating sales to include both Indonesian mattresses purchased during the period of investigation and Zinus U.S.' existing inventory. *Second Remand Redetermination* at 8. Commerce did not change its methodology for calculating Zinus Korea's selling expenses. *Id.* at 15–23. Commerce calculated Plaintiff's remand weighted-average dumping margin at zero percent. *Id.* at 23.

JURISDICTION AND STANDARD OF REVIEW

The Court has jurisdiction under 19 U.S.C. § 1516a(a)(2)(B)(i) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions

contesting the final determination in an antidumping duty investigation. The Court shall hold unlawful any determination found to be unsupported by substantial evidence on the record or otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i). The Court also reviews determinations made on remand for compliance with the Court's remand order. *Ad Hoc Shrimp Trade Action Comm. v. United States*, 38 CIT 727, 730, 992 F. Supp. 2d 1285, 1290 (2014), *aff'd*, 802 F.3d 1339 (Fed. Cir. 2015).

DISCUSSION

I. Legal Framework

Commerce imposes antidumping duties on foreign goods if: (1) it determines that the merchandise "is being, or is likely to be, sold in the United States at less than its fair value;" and (2) the International Trade Commission determines that the sale of the merchandise at less than fair value materially injures, threatens, or impedes the establishment of an industry in the United States. 19 U.S.C. § 1673. Antidumping duties are calculated as the difference between the normal value of subject merchandise and the export price or the constructed export price of the subject merchandise. *Id.*

Normal value is ordinarily determined using the sales price of the subject merchandise in the seller's home market. 19 U.S.C. § 1677b(a)(1)(B)(i). If Commerce determines that normal value cannot be reliably calculated using home market or third-country sales, Commerce may use the subject merchandise's constructed value as an alternative to normal value. *Id.* § 1677b(a)(4). The method for calculating constructed value is defined by statute. *Id.* § 1677b(e). When calculating constructed value, Commerce must utilize the respondent's actual selling, general, and administrative expenses, and profits in the respondent's home market or a third-country market. *Id.* § 1677b(e)(2)(A). If Commerce cannot rely on those data, it may look to:

> (i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,
>
> (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a

> foreign like product, in the ordinary course of trade, for consumption in the foreign country, or
>
> (iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.

Id. § 1677b(e)(2)(B).

Commerce must also calculate export price or constructed export price.

Export price is:

> the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,

subject to certain adjustments. *Id.* § 1677a(a). Constructed export price is:

> the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,

subject to certain adjustments. *Id.* § 1677a(b). The price used to calculate constructed export price is reduced by commissions, selling expenses, further manufacturing expenses, and the profit allocated to these expenses. *Id.* § 1677a(d).

II. In-Transit Mattresses

On remand, Commerce determined that record evidence established "two very important facts," that: (1) a certain quantity of in-transit Indonesian mattress models that Zinus Korea sold to Zinus U.S. during the period of investigation did not enter Zinus U.S.' inventory until after the period of investigation had concluded; and (2) "Zinus U.S. had a sufficient number of the Indonesia model num-

bers that were in common with other countries in its physical inventory to support the U.S. sales of such products reported as non-subject merchandise in its U.S. sales database." *Second Remand Redetermination* at 10–11. Based on these facts, Commerce adopted a quarterly ratio calculation based on both Zinus U.S.' purchase data and existing inventory data for Indonesian model numbers in common with other countries. *Id.* at 8, 12–13. Defendant-Intervenors argue that Commerce's decision to exclude in-transit mattresses from the quarterly ratio calculation is not in accordance with the law and is unsupported by substantial evidence. Def.-Intervs.' Br. at 6–17.

A. Methodology

As this Court observed in its prior opinion in this case, the "[c]alculation of constructed export price requires Commerce to identify sales of subject merchandise in the United States during the period of investigation[, but] [t]he relevant statutes and regulations provide little guidance on how to allocate merchandise within an inventory that comingles subject and non-subject merchandise." *PT. Zinus I*, 47 CIT at __, 628 F. Supp. 3d at 1263 (citing *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996)). The methodology adopted by Commerce to allocate merchandise within an inventory must be a reasonable means of effectuating Commerce's statutory directives. *Tri Union Frozen Prods., Inc. v. United States*, 40 CIT __, __, 163 F. Supp. 3d 1255, 1300 (2016), *aff'd*, 741 F. App'x 801 (Fed. Cir. 2018) (citing *Ceramica Regiomontana, S.A. v. United States*, 10 CIT 399, 404–05, 636 F. Supp. 961, 966 (1986), *aff'd*, 810 F.2d 1137, 1139 (Fed. Cir. 1987)).

In the Draft Second Remand Redetermination, Commerce based its quarterly ratio calculation on only Indonesian model number purchase data. Draft Second Remand Redetermination at 5–8. In the *Second Remand Redetermination*, Commerce changed its methodology to "include not just the purchase data but also the existing inventory data for Indonesian model numbers in common with other countries." *Second Remand Redetermination* at 8, 12–13; Mattresses from Indonesia: Final Remand Results Calculation Mem. PT Indonesia ("Final Results Calculation Memorandum" or "Calculation Mem.") at Att. 4, PRR 24–29, CRR 27–30. In explaining its reasoning for changing the methodology, Commerce stated that "applying quarterly ratios calculated using only the Indonesian mattress models purchased during the [period of investigation] and applying those ratios to the total sales reported in both U.S. sales databases yields an impossible result" of the total sales quantity of Indonesian mattresses significantly exceeding the quantity of purchased Indonesian mat-

tresses. *Second Remand Redetermination* at 8, 11–12; Calculation Mem. at Att. 3. Commerce represented that a quarterly ratio methodology based only on purchase data would result in Zinus U.S. possessing an insufficient inventory to satisfy its sales for multiple model numbers of Indonesian mattresses. *Second Remand Redetermination* at 12; Calculation Mem. at Att. 3.

Commerce may change its methodology between the draft and final version of a determination but must explain the basis for the change and the change must be supported by substantial evidence and in accordance with the law. *Hyundai Steel Co. v. United States*, 42 CIT __, __, 319 F. Supp. 3d 1327, 1343 (2018). Commerce explained that the problematic results from using only purchase data were resolved through the inclusion of the quantity of mattresses Zinus U.S. held in inventory at the beginning of the period of investigation. *Second Remand Redetermination* at 12–13. Commerce determined that this approach "results in a total sales quantity of Zinus U.S.' Indonesian-produced mattresses that is less than the total quantity of such mattresses that were available for sale from its inventory during the [period of investigation]." *Id.* at 13; Calculation Mem. at Att. 4.

Commerce acknowledged that:

> although this approach results in sold quantities being greater than purchased quantities for some models, these seemingly incongruous results are smoothed out when cumulated, such that the aggregate adjusted sales quantity for all Indonesia mattress sales is less than the total purchase quantity of these mattress model numbers from Indonesia. Therefore, unlike a quarterly ratio calculation based on purchase data only, a quarterly ratio calculation based on both purchase and inventory data applied to Zinus U.S.' [constructed export price] sales transactions results in a sales quantity assigned to Indonesia that is less than its total purchase quantity on an aggregate level, which is a more plausible result than we reached in the draft remand results.

Second Remand Redetermination at 13.

The Court concludes that the *Second Remand Redetermination* provides a reasonable justification for changing Commerce's methodology and not limiting the quarterly ratio calculation to only purchase data. *See Hyundai Steel Co.*, 42 CIT at __, 319 F. Supp. 3d at 1343. Commerce's determination to include the mattresses held by Zinus U.S. in inventory at the beginning of the period of investigation

resulted in the more plausible result that Zinus U.S.' sales quantity was less than its total quantity purchased from Zinus Korea on the aggregate level. *Id.* The Court concludes this to be a reasonable means of allocating U.S. sales for purposes of calculating constructed export price. *Tri Union Frozen Prods., Inc.*, 40 CIT at __, 163 F. Supp. 3d at 1300. The Court concludes that Commerce's quarterly ratio methodology incorporating purchase and inventory data is in accordance with law.

B. Exclusion of In-Transit Mattresses

Defendant-Intervenors argue that Commerce's determination that "Zinus U.S. had a sufficient number of the Indonesia model numbers that were in common with other countries in its physical inventory to support the U.S. sales of such products reported as non-subject merchandise in its U.S. sales database," is not supported by substantial evidence. Def.-Intervs.' Br. at 6–11. Defendant-Intervenors further argue that Commerce's decision to change its quarterly ratio methodology between the Draft Second Remand Redetermination and the *Second Remand Redetermination* was unsupported by substantial evidence. *Id.* at 12–15. In support of both of these arguments, Defendant-Intervenors point to examples of individual mattress model numbers for which the quantity of sales from Zinus U.S.' inventory during the period of investigation exceeded the quantity of mattresses in inventory. *Id.* at 6–15.

On remand, Commerce considered data submitted by Zinus Indonesia regarding Zinus U.S.'s quantity of mattresses in inventory at the start of the period of investigation and purchase quantity of in-transit constructed export price mattresses at the end of the period of investigation on a model-specific and aggregate basis. *Second Remand Redetermination* at 5–6; *see* Pl.'s Suppl. Questionnaire Resp. at Exs. RS-10, RS-11. Based on this data, Commerce determined that "Zinus U.S.' total inventory of relevant mattresses during the [period of investigation] was sufficient to support its mattress sales during the [period of investigation]." *Second Remand Redetermination* at 6. Commerce further determined that, on a model-specific level, the number of Indonesian model numbers that were either in common with those used by manufacturers in other countries or were unique to Indonesia exceeded the quantity of sales of Indonesian mattress model numbers. *Id.* at 6; Calculation Mem. at Att. 1 at Chart 2. Commerce considered the accounting of mattresses in transit at the end of the period of investigation provided by Zinus Indonesia and determined that Zinus U.S. had sufficient inventory at the beginning of the period of investigation to account for the differences between

sales and purchases during the period of investigation. *Second Remand Redetermination* at 6–7; *see* Pl.'s Suppl. Questionnaire Resp. at Ex. RS-11.

Defendant-Intervenors contend that Commerce's "Ratio Application" worksheet attached to its calculation memoranda shows that for seven model numbers, the quantity of sales during the period of investigation exceeded the quantity of mattresses available in inventory. Def.-Intervs.' Br. at 6–9; Calculation Mem. at Att. 5 at Chart 2. Defendant-Intervenors argue that the existence of these discrepancies undermines Commerce's determinations to exclude in-transit mattresses and to alter its quarterly ratio methodology. Def.-Intervs.' Br. at 9–12.

Commerce determined that an allocation methodology was necessary in this case because Plaintiff did not maintain records of the country of origin for mattresses after the merchandise entered Plaintiff's domestic warehouse. *See* IDM at 8–9. In attempting to recreate an estimated allocation of mattresses within Zinus U.S.' inventory, Commerce relied upon the data available on the record. *See Second Remand Redetermination* at 5–9. Commerce is not required to use perfect data but must explain why its choice was reasonable on the record. *Tenaris Bay City, Inc. v. United States*, 48 CIT __, __, 2024 WL 5056271, at *4 (Dec. 2, 2024) (citing *PT Pindo Deli Pulp and Paper Mills v. United States*, 36 CIT 394, 414, 825 F. Supp. 2d 1310, 1327–28 (2012)). In making its determination, Commerce acknowledged that its methodology resulted in sold quantities being greater than purchased quantities for some models, explaining that "these seemingly incongruous results are smoothed out when cumulated, such that the aggregate adjusted sales quantity for all Indonesia mattress sales is less than the total purchase quantity of these mattress model numbers from Indonesia." *Second Remand Redetermination* at 13.

Plaintiff notes that the identified anomalies constitute only 0.16 percent of the hundreds of thousands of mattresses sold from Zinus U.S.'s inventory during the period of investigation and that none of the anomalous mattress models were among those in transit at the end of the period of investigation. Pl.'s Br. at 12–14; *compare* Calculation Mem. at Att. 5 *with* Pl.'s Suppl. Questionnaire Resp. at Ex. RS-11. Considering the relatively minor scale of the discrepancies and the fact that the anomalies were balanced out when mattress sales were considered in the aggregate, the Court concludes that Commerce's methodology is reasonable under the circumstances of this case and would result in only very minor distortions of less than one percent (0.16 percent of hundreds of thousands of mattresses) in

the calculation of constructed export price. *Cf.* 19 C.F.R. § 351.401(g) ("The Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.").

Because Commerce based its choice of methodology on record evidence and provided a reasonable explanation for any minor discrepancies, the Court concludes that Commerce's determination that Zinus U.S. had a sufficient number of Indonesian model number mattresses in inventory to satisfy its sales during the period of investigation was reasonable and supported by substantial evidence. The Court also concludes that Commerce's determination to base its quarterly ratio calculation on purchase data and existing inventory data was supported by substantial evidence. The Court sustains Commerce's quarterly ratio methodology and its exclusion of in-transit mattresses.

III. Zinus Korea's Selling Expenses

In the *Final Determination*, Commerce considered Zinus Korea to be an affiliate of Zinus Indonesia and deducted only the actual selling expenses incurred by Zinus Korea in its margin calculation. *See* IDM at 32; *PT. Zinus I*, 47 CIT at __, 628 F. Supp. 3d. at 1280. The Court found that Commerce did not support its determination that Zinus Korea's involvement in Zinus Indonesia's U.S. sales was limited and that Commerce did not address arguments raised by Defendant-Intervenors challenging the application of Korean accounting rules. *PT. Zinus I*, 47 CIT at __, 628 F. Supp. 3d. at 1280–82. On remand, Commerce again determined that Zinus Korea's involvement in the sale of subject mattresses was minimal and continued to treat costs considered "commissions and fees" as payments between related parties and not as selling expenses. *Remand Redetermination* at 9–16; *see PT. Zinus II*, 48 CIT at __, 686 F. Supp. 3d at 1356–57. Defendant-Intervenors continued to object to Commerce's determination, arguing that record evidence supported Zinus Korea having a more active role in Zinus Indonesia's U.S. sales. Def.-Intervs.' Cmts. Part. Opp'n Final Results Redetermination at 2–4, ECF Nos. 62, 63. Defendant acknowledged inconsistencies in the record related to Zinus Korea's selling functions and requested a remand of the issue to allow for the record to be reopened for additional information. Def.'s Resp. Cmts. Remand Redetermination at 15–17, ECF No. 74, 75. The Court remanded the issue. *PT. Zinus II*, 48 CIT at __, 686 F. Supp. 3d at 1357.

On second remand, Commerce solicited additional information through its supplemental questionnaire "regarding Zinus Korea's

sales-related activities, invoicing system, and all indirect selling expenses incurred by Zinus Korea associated with Zinus Indonesia's U.S. sales." *Second Remand Redetermination* at 15; Remand Suppl. Questionnaire. In its response to Commerce's supplemental questionnaire, Plaintiff reported that some Zinus Korea employees were involved in receiving invoices from Zinus Indonesia and forwarding those invoices to customers in the United States. *Second Remand Redetermination* at 15. These employees had other responsibilities beyond invoicing for Zinus Indonesia, which accounted for only a portion of their time. *Id.* at 15–16. Commerce determined that while Zinus Indonesia determined the sales terms for both export price and constructed export price sales to U.S. customers, "Zinus Korea's role was limited to receiving invoices from Zinus Indonesia and forwarding them to affiliated and unaffiliated U.S. customers." *Id.* at 16; Pl.'s Suppl. Questionnaire Resp. at 2–3.

Commerce further determined that Zinus Korea's role in warranty services was minimal. *Second Remand Redetermination* at 16–17. Zinus Korea did not provide "logistical services, training services, or technical support" and received requests for defective allowances from U.S. customers only once a year. *Id.* at 16. Commerce acknowledged that a few Zinus Korea employees provided monthly sales promotion programs to export price customers in the United States, but determined that only one program concerning a single customer was in effect during the period of investigation. *Id.* at 16–17; *see* Pl.'s Sec. C Questionnaire Resp. at Ex. C-13, PR 119–20, CR 117–20.

Based on Plaintiff's reporting, Commerce concluded that Zinus Korea was not involved in the basic selling functions that were performed by Zinus Indonesia and Zinus U.S., such as providing training services, technical support, inventory management, and logistical services. *Second Remand Redetermination* at 17; *see* Pl.'s Suppl. Questionnaire Resp. at Ex. RS-5 at ## 6–9. In support of this determination, Commerce relied on sample internal emails and emails with U.S. customers. *Second Remand Redetermination* at 17; *see* Pl.'s Suppl. Questionnaire Resp. at Ex. RS-5 at ## 6–9.

Commerce also reviewed a worksheet provided by Plaintiff reconciling Zinus Korea's indirect selling expenses with Zinus Korea's financial statements. *Second Remand Redetermination* at 17–18; *see* Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7; Pl.'s Sec. A. Questionnaire Resp. at Ex. A-11d(1). The worksheet reflected Zinus Korea's selling, general, and administrative expenses in six categories:

> (1) certain expenses which were not incurred on behalf of the sale process with Zinus Indonesia, *i.e.*, professional fees (*i.e.*, column B); (2) expenses incurred by Zinus Korea that it included

> in Zinus Indonesia's general and administrative [] expenses (*i.e.*, column C); (3) expenses related to home market (Korea) sale activities (*i.e.*, column D); (4) direct expenses incurred for sales to the United States (reported in Zinus U.S.' sales database) (*i.e.*, Column E); (5) direct expenses on exports to countries other than the United States (*i.e.*, Column F); and (6) expenses only associated with Zinus Korea's business operations (*i.e.*, Column G).

Second Remand Redetermination at 18, 20–21; Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7. Plaintiff excluded the expenses from its total expense pool during the period of investigation and identified the portion of its total selling expenses related to global sales operations, which involved multiple subsidiaries of Zinus Korea. *Second Remand Redetermination* at 18; Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7. Plaintiff allocated the total global sales expenses between the various subsidiaries based on their respective unconsolidated sales revenue and calculated an indirect selling expenses ratio of Zinus Indonesia's mattresses in the United States of less than one percent. *Second Remand Redetermination* at 18; Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7. The ratio was applied to the gross unit prices reported in Plaintiff's U.S. sales database to determine a new expense variable. *Second Remand Redetermination* at 18; Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7. The variable was incorporated into Commerce's margin calculation but did not impact the margin result. *Second Remand Redetermination* at 18. Commerce determined that Zinus Korea had only a limited role in the U.S. sale of Zinus Indonesia's mattresses during the period of investigation. *Id.* at 21.

Defendant-Intervenors contend that another remand of this issue is appropriate for three reasons. First, Defendant-Intervenors argue that Commerce improperly excluded certain categories of expenses incurred by Zinus Korea on behalf of Zinus Indonesia and deviated from prior practice. Def.-Intervs.' Br. at 17–21. Second, Defendant-Intervenors contend that Plaintiff's allocation methodology is "nonsensical" and distortive. *Id.* at 21–23. Third, Defendant-Intervenors argue that Commerce treated Zinus Korea's indirect selling expenses as in-country selling expenses incurred by Zinus Indonesia. *Id.* at 23–24.

A. Exclusion of Zinus Korea's Expenses

In the *Second Remand Redetermination*, Commerce explained that "Zinus Korea is a trading company, not a production entity, such that the [general and administrative] expenses it incurs at its headquar-

ters in Seoul, South Korea, are not production-related." *Second Remand Redetermination* at 22. Defendant-Intervenors argue that this justification is inconsistent with prior determinations by Commerce and U.S. Court of International Trade decisions that have held that general and administrative expenses are those expenses that relate to the general operations as a whole rather than to the production process. Def.-Intervs.' Br. at 20 (quoting *Prestressed Concrete Steel Wire Strand From Tunisia*, 86 Fed. Reg. 18,508 (Dep't of Commerce Apr. 9, 2021)) (final affirmative determination of sales at less than fair value)); *see also U.S. Steel Grp. v. United States*, 22 CIT 104, 106, 998 F. Supp. 1151, 1154 (1998). Defendant concedes that Commerce's language was imprecise but argues that Commerce's application was consistent with its existing practice. Def.'s Br. at 16–17.

Zinus Indonesia submitted additional information to Commerce regarding "Zinus Korea's sales-related activities, invoicing system, and all indirect selling expenses incurred by Zinus Korea associated with Zinus Indonesia's U.S. sales." *Second Remand Redetermination* at 15; *see* Pl.'s Suppl. Questionnaire Resp. Defendant-Intervenors have not identified any record evidence that contradicts the validity of this data or suggests that particular expenses were improperly excluded based on a determination that they were related to production rather than sales. *See* Def.-Intervs.' Br. at 17–21.

In the *Second Remand Redetermination*, Commerce considered Zinus Indonesia's Supplemental Questionnaire Response and other financial documents provided by Zinus Indonesia. *Second Remand Redetermination* at 16–23. With respect to Zinus Indonesia's invoicing, Commerce observed that a small number of Zinus Korea employees were involved in receiving invoices from Zinus Indonesia and forwarding the invoices to customers in the United States. *Second Remand Redetermination* at 15; *see* Pl.'s Suppl. Questionnaire Resp. at 1. Commerce noted that these employees had other responsibilities for Zinus Korea and other Zinus Korea affiliates and spent only a portion of their time on Zinus Indonesia's invoicing. *Second Remand Redetermination* at 15; *see* Pl.'s Suppl. Questionnaire Resp. at 1. Commerce also observed that Zinus Korea's role was limited to receiving and forwarding invoices and that Zinus Korea processed orders only once a month. *Second Remand Redetermination* at 16; *see* Pl.'s Suppl. Questionnaire Resp. at 1–3, 9.

With regard to other services performed by Zinus Korea, Commerce determined that Zinus Korea's United States customer requested defective allowances once per year. *Second Remand Redetermination* at 16 (citing Pl.'s Suppl. Questionnaire Resp. at Ex. RS-5 at # 3–1). Commerce further determined that a small number of Zinus Korea

employees were involved in certain sales promotion programs to customers in the United States, but only one of those programs, pertaining to one customer, was in operation during the period of investigation. *Id.* at 16–17; *see* Pl.'s Sec. C Questionnaire Resp. at Ex. C-13. Commerce also considered documents related to the sales functions performed by Zinus Indonesia and Zinus U.S. *Second Remand Redetermination* at 17 (citing Pl.'s Suppl. Questionnaire Resp. at Ex. RS-5 at ## 7–9).

Commerce reviewed the worksheet provided by Zinus Indonesia reconciling the indirect selling expenses incurred by Zinus Korea with Zinus Korea's financial statements. *Second Remand Redetermination* at 18, 20–21; Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7. Zinus Korea provided a breakdown of its total selling expenses pool by account code and calculated the portion of its total expenses related to global sales by its subsidiaries. *Second Remand Redetermination* at 18. A portion of Zinus Korea's global selling expenses was allocated to Zinus Indonesia based on Zinus Indonesia's total unconsolidated revenue relative to the combined total unconsolidated sales revenue of all of Zinus Korea's subsidiaries. *Id.* at 19. The resulting value was used to calculate Zinus Indonesia's indirect selling expense ratio and a per unit value. *Id.*

The only argument offered by Defendant-Intervenors to challenge the data provided by Zinus Indonesia was that the worksheet provided by Zinus Indonesia on remand breaking down Zinus Korea's expenses included within its excluded expenses two cost centers with titles suggesting a role in global business operations. Def.-Intervs.' Br. at 17–21. Defendant-Intervenors contend that because Zinus Indonesia acknowledged in its questionnaire responses to Commerce that Zinus Korea and its subsidiaries "closely coordinate with one another to manage global manufacturing, operational, and sales activities," that the identified expenses should be attributed to Zinus Korea's general and administrative expenses due to its role as a parent company. *Id.* at 18–19 (citing Pl.'s Sec. A Questionnaire Resp. at A-11). This argument amounts to nothing more than speculation on behalf of Defendant-Intervenors.

Zinus Indonesia provided additional information on its sales-related activities, invoicing system, and indirect selling-expenses incurred by Zinus Korea in response to Commerce's request on remand. Based on the best available information on the record, Commerce allocated selling expenses in order to calculate a dumping margin. *Second Remand Redetermination* at 19. Defendant-Intervenors have identified no record evidence challenging Zinus Indonesia's reporting. For these reasons, the Court concludes that Commerce properly ex-

cluded expenses incurred by Zinus Korea on behalf of Zinus Indonesia and its determination was supported by substantial evidence.

B. Allocation Methodology

Defendant-Intervenors argue that Plaintiff's methodology for allocating expenses to Zinus Korea was distortive. Def.-Intervs.' Br. at 22–23. Defendant-Intervenors contend that Commerce's allocation ratio divided an expense improperly that did not include intercompany transactions by a total revenue that did include intercompany transactions. *Id.*

In calculating a constructed export price, Commerce begins with "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation" and makes certain statutory adjustments. 19 U.S.C. § 1677a(b), (d). Among the reductions expressly provided by statute is the amount of selling expenses "incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise." *Id.* § 1677a(d). In allocating selling expenses, Commerce must adopt an allocation method that does not result in inaccuracies or distortions. 19 C.F.R. § 351.401(g)(1).

In the *Second Remand Redetermination*, Commerce explained its allocation methodology as:

> [u]sing the sales revenues of each entity as a basis for deriving an allocation ratio to apply to [Zinus Korea's] total selling expenses is an appropriate allocation method for purposes of determining [Zinus Korea's] indirect selling expenses associated with sales of subject merchandise produced by Zinus Indonesia and sold through [Zinus Korea] to the United States during the [period of investigation]. The record demonstrates that Zinus Korea's expenses do not include expenses incurred by other related companies. Similarly, the sales revenue figures are unadjusted for intercompany transactions. Therefore, it would be nonsensical to calculate an allocation ratio by dividing an expense that does not include intercompany transactions by a sales revenue figure that does factor in such transactions.

Second Remand Redetermination at 22. Defendant argues that Commerce erred in stating that "[t]he record demonstrates that Zinus Korea's expenses do not include expenses incurred by other related companies" and that Commerce's calculations actually included intercompany transactions in both the numerator and denominator of the allocation ratio. Def.'s Br. at 20–21. Defendant cites Exhibit RS-7 to Zinus Indonesia's Supplemental Questionnaire Response in sup-

port of its contention. *Id.* (citing Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7). Defendant notes that the amount reconciliation worksheet reconciles Zinus Korea's total selling, general, and administrative expenses to the financial statements without an adjustment to remove intercompany transactions. *Id.* at 21 (citing Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7; Pl.'s Sec. A Questionnaire Resp. at A11(d)(1) at 8). Defendant also notes that intercompany transactions were not among the categories of expenses excluded by Plaintiff. *Id.* at 22 (citing Pl.'s Suppl. Questionnaire Resp. at 20–21). Based on this documentation, Defendant contends that Commerce did include intercompany transfers in the numerator of the allocation ratio and that doing so was necessary because the record did not contain sufficient data to allow for intercompany transfers to be excluded from the denominator. *Id.*

Although Commerce stated that "[t]he record demonstrates that Zinus Korea's expenses do not include expenses incurred by other related companies," the subsequent sentences and the data relied upon indicate that Commerce utilized data that included intercompany transfers for both the numerator and denominator of the allocation ratio. *See Second Remand Redetermination* at 22; Pl.'s Suppl. Questionnaire Resp. at Ex. RS-7; Pl.'s Sec. A Questionnaire Resp. at A11(d)(1) at 8. Because intercompany transactions were included in both the numerator and denominator of the allocation ration, the approach is not distortive to the constructed export price calculation. *See* 19 C.F.R. § 351.401(g). Therefore, the Court concludes that Commerce's methodology is reasonable and supported by substantial evidence.

C. Treatment of Zinus Korea's Expenses as In-Country Expenses

Defendant-Intervenors argue that Commerce treated Zinus Korea's indirect selling expenses improperly as in-country selling expenses incurred by Zinus Indonesia. Def.'s Br. at 23–24.

In the *Second Remand Redetermination*, Commerce treated U.S. indirect selling expenses incurred in Korea and U.S. indirect selling expenses incurred in Indonesia the same in calculating the dumping margin. *Second Remand Redetermination* at 22–23. Commerce explained that its "general practice is to treat such expenses as foreign indirect selling expenses (*i.e.*, the same as indirect selling expenses incurred in the country of manufacture)." *Id.* at 23 (citing *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy*,

87 Fed. Reg. 71 (Dep't of Commerce Jan. 3, 2022) (final admin. determination), and accompanying Issues and Decisions Memorandum at comment 4).

Commerce is obligated to treat similar situations in a consistent manner and must reasonably explain any deviation from an established practice. *See SKF USA, Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) ("An agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently." (internal citation omitted)); *M.M. & P. Mar. Advancement, Training, Educ. & Safety Program v. Dep't of Commerce*, 729 F.2d 748, 755 (Fed. Cir. 1984) ("An agency is obligated to follow precedent, and if it chooses to change, it must explain why."); *Cinsa, S.A. de C.V. v. United States*, 21 CIT 341, 349, 966 F. Supp. 1230, 1238 (1997) ("Commerce can reach different determinations in separate administrative reviews but it must employ the same methodology or give reasons for changing its practice.").

In the *Second Remand Redetermination*, Commerce explained that its "general practice" is to "calculate foreign indirect selling expenses as the sum of the respondent's indirect selling expenses in its own country and the indirect selling expenses of its third country affiliates." *Second Remand Redetermination* at 23. Commerce took the same position in the prior administrative review of *Mattresses from Indonesia*. *Mattresses From Indonesia*, 88 Fed. Reg. 85,240 (Dep't of Commerce Dec. 7, 2023) (final results of antidumping duty administrative review; 2020–2022) and accompanying issues and decisions memorandum at comment 6 ("For [constructed export price] sales, we continued to treat [Zinus Korea's indirect selling expenses] in the same manner as indirect selling expenses incurred in the domestic market (DINDIRSU) in the margin program, both of which represent expenses incurred on behalf of the U.S. sales in either the country of manufacture or third country.").

In *Certain Cold-Drawn Mechanical Tubing and Alloy Steel from Italy*, Commerce treated the indirect selling expenses reported for two of the respondent's foreign affiliates as indirect selling expenses incurred in the country of manufacture and explained its:

> general practice [] to treat such expenses as foreign indirect selling expenses (*i.e.*, the same as indirect selling expenses incurred in the country of manufacture). Specifically, we calculate foreign indirect selling expenses as the sum of the respondent's indirect selling expenses in its own country and the indirect selling expenses of its third country affiliates.

Second Remand Redetermination at 23 (citing *Certain Cold-Drawn Mechanical Tubing and Alloy Steel from Italy*, 87 Fed. Reg. 71 (Dep't of Commerce Jan. 3, 2022) (final results of antidumping administrative review; 2019–2020), and accompanying issues and decisions memorandum at comment 4). Commerce applied the same practice in *Dioctyl Terephthalate from the Republic of Korea*. *See Dioctyl Terephthalate from the Republic of Korea*, 82 Fed. Reg. 28,824 (Dep't of Commerce June 26, 2017) (final determination of sales at less than fair value and final negative determination of critical circumstances), and accompanying issues and decisions memorandum at comment 5 ("Thus, for this final determination, we have continued to calculate indirect selling expenses incurred in the country of manufacture for AKP's U.S. sales as the sum of the [indirect selling expenses] incurred in AKP and its third-country affiliates.").

An established agency practice exists "when a uniform and established procedure exists that would lead a party, in the absence of notification of a change, reasonably to expect adherence to the [particular action] or procedure." *SeAH Steel VINA Corp. v. United States*, 40 CIT __, __, 182 F. Supp. 3d 1316, 1327 (2016) (quoting *Huvis Corp. v. United States*, 31 CIT 1803, 1811, 525 F. Supp. 2d 1370, 1378 (2007)). In its submissions to Commerce, Zinus Indonesia expressed its expectation that reported indirect selling expenses would be "treated in the same manner as indirect selling expenses incurred in the domestic market." Pl.'s Suppl. Questionnaire Resp. at 12. Based on Commerce's prior actions, including consistent determinations that created Zinus Indonesia's expectation upon which it reasonably relied, the Court finds that Commerce has an established practice to treat U.S. indirect selling expenses incurred by a third-country affiliate the same as U.S. indirect selling expenses incurred in the country of manufacture.

In Commerce's margin calculation, U.S. indirect selling expenses incurred in the country of manufacture were reflected in the field DINDIRSU. Calculation Mem. In the Final Results Calculation Memorandum, Commerce explained that Zinus Indonesia's reporting included a new variable, DINDIRS2U, "representing indirect selling expenses incurred in Korea." *Id.* at 2. To calculate DINDIRS2U, Zinus Indonesia allocated a portion of Zinus Korea's total expense pool related to its global sales for all subsidiaries to Zinus Indonesia's operations, based on total combined unconsolidated sales revenue. *Second Remand Redetermination* at 18–19. The resulting expense figure was divided by the total sales of Zinus Indonesia's mattresses to the United States to calculate an indirect selling expense ratio for

U.S. sales made by Zinus Indonesia. *Id.* at 19. The selling expense ratio was then multiplied by the gross unit prices reported in the U.S. sales database to obtain the pre-unit figures reported in DINDIRS2U. *Id.* Commerce added the DINDIRS2U variable to DINDIRSU in its margin calculation. Calculation Mem. at 2; *Second Remand Redetermination* at 23. The Court concludes that Commerce's treatment of Zinus Korea's U.S. indirect selling expenses as U.S. indirect selling expenses incurred in Indonesia was consistent with its established practice.

Defendant-Intervenors argue that following Commerce's normal practice is unreasonable in this case because Zinus Korea did not have sales of subject mattresses to the home market or to third-country markets during the period of investigation and any indirect expenses occurred were necessarily related to sales within the United States. Def.-Interv.'s Br. at 23–24. Defendant contends that because Commerce's standard margin calculation did not include indirect selling expenses in the country of manufacture in the calculation of U.S. price or normal value, the expenses incurred by Zinus Korea were effectively ignored. *Id.*

In calculating constructed export price, Commerce makes adjustments to the price at which goods are sold, or agreed to be sold, for exportation to the United States in order to achieve a fair comparison between U.S. price and foreign market value. 19 U.S.C. § 1677a(b)–(d). Zinus Korea's indirect selling expenses were incurred during the sale of the subject mattresses and excluding them from Commerce's constructed export price calculation would have distorted the comparison between U.S. price and the foreign market value of the goods. Commerce's statement that inclusion of the DINDIRS2U variable with U.S. indirect selling expenses incurred in the country of manufacture "had no effect on the margin results" did not mean that the data was ignored, merely that it had an inconsequential impact on the calculation as a whole. *See Second Remand Redetermination* at 19. Because Commerce's inclusion of Zinus Korea's U.S. indirect selling expenses with Zinus Indonesia's in-country U.S. indirect selling expenses was reasonable and consistent with Commerce's established practice, the Court concludes that Commerce's determination was in accordance with law. For the reasons discussed above, the Court sustains Commerce's treatment of Zinus Korea's selling expenses.

CONCLUSION

For the foregoing reasons, the Court sustains Commerce's *Second Remand Redetermination* as supported by substantial evidence and in accordance with law. Accordingly, it is hereby

ORDERED that the *Final Results of Redetermination Pursuant to Court Remand*, ECF Nos. 87–1, 87–2, are sustained.

Judgment will be entered accordingly.

Dated: February 18, 2025
New York, New York

/s/ Jennifer Choe-Groves
JENNIFER CHOE-GROVES, JUDGE

Slip Op. 25–16

JIANGSU SENMAO BAMBOO AND WOOD INDUSTRY CO., LTD., Plaintiff, and LUMBER LIQUIDATORS SERVICES, LLC, Plaintiff-Intervenor, v. UNITED STATES, Defendant, and AMERICAN MANUFACTURERS OF MULTILAYERED WOOD FLOORING, Defendant-Intervenor.

Before: Jennifer Choe-Groves, Judge
Court No. 22–00190

[Sustaining in part and remanding in part the U.S. Department of Commerce's Final Results of Redetermination Pursuant to the Second Remand Order in the antidumping duty review of multilayered wood flooring from the People's Republic of China.]

Dated: February 18, 2025

Jeffrey S. Neeley and *Stephen W. Brophy*, Husch Blackwell LLP, of Washington, D.C., for Plaintiff Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.

Mark R. Ludwikowski and *Kelsey Christensen*, Clark Hill PLC, of Washington, D.C., for Plaintiff-Intervenor Lumber Liquidators Services, LLC.

Kelly M. Geddes, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With them on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Tara K. Hogan*, Assistant Director. Of counsel on brief was *Christopher Kimura*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Timothy C. Brightbill, *Stephanie M. Bell*, *Maureen E. Thorson*, and *Theodore P. Brackemyre*, Wiley Rein, LLP, of Washington, D.C., for Defendant-Intervenor American Manufacturers of Multilayered Wood Flooring.

OPINION AND ORDER

Choe-Groves, Judge:

The Court remands for a third time the determination of the U.S. Department of Commerce ("Commerce").

In summary, the Brazilian plywood import data contains objectively incorrect information, which Commerce chose to address by deleting one month of import data, rather than reopening the record to obtain accurate data. Commerce's deletion of the one month of import data resulted in a distortion that increased the Brazilian plywood surrogate value ("SV") by 453%, thus leading one to question whether Commerce's repeated insistence on using objectively incorrect Brazilian data is results-driven or cherry-picking.

For the reasons explained below, the Court remands Commerce's adjustment of surrogate value data for plywood. The Court sustains Commerce's selection of Brazil as the primary surrogate country and the use of Malaysian data for oak log inputs.

Before the Court is Commerce's second remand redetermination in the administrative review of the antidumping duty order on multi-

layered wood flooring from the People's Republic of China ("China") for the period of December 1, 2019, through November 30, 2020, filed pursuant to the Court's Opinion and Order in *Jiangsu Senmao Bamboo & Wood Industry Co., v. United States* ("*Senmao II*"), 48 CIT __, 698 F. Supp. 3d 1277 (2024). *Final Results of Redetermination Pursuant to Court Remand Order* ("*Second Remand Redetermination*"), ECF No. 66–1; *see also Final Results of Redetermination Pursuant to Remand Order* ("*Remand Redetermination*"), ECF No. 55–1; *Multilayered Wood Flooring from the People's Republic of China* ("*Final Results*"), 87 Fed. Reg. 39,464 (Dep't of Commerce July 1, 2022) (final results of antidumping duty administrative review; 2019–2020) and accompanying Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China; 2019–2020 (Dep't of Commerce June 24, 2022) ("IDM"), PR 245.[1]

ISSUES PRESENTED

The Court reviews the following issues:

1. Whether Commerce's determination to select Brazil as the primary surrogate country, while using Malaysian data for oak log inputs, is supported by substantial evidence and in accordance with law; and

2. Whether Commerce's determination to adjust the Brazilian surrogate value data for plywood is supported by substantial evidence and in accordance with law.

BACKGROUND

Commerce initiated the underlying administrative review on February 2, 2021. *Initiation of Antidumping and Countervailing Duty Admin. Review, Multilayered Wood Flooring from the People's Republic of China*, 86 Fed. Reg. 8166, 8169–71 (Dep't of Commerce Feb. 4, 2021). Commerce conducted an administrative review of the antidumping duty order on multilayered wood flooring from China for the period from December 1, 2019, through November 30, 2020, and selected Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. ("Plaintiff" or "Senmao") as the mandatory respondent in the investigation. *Id.*; Commerce's Antidumping Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2019–2020: Respondent Selection Mem., PR 112.

[1] Citations to the administrative record reflect the public record ("PR"), remand public record ("RPR"), and second remand public record ("2RPR") numbers filed in this case, ECF Nos. 48, 64, 72.

In its *Final Results*, Commerce selected Brazil as the primary surrogate country, but it valued Senmao's oak and non-oak logs with Malaysian surrogate values. IDM at 9, 22; *Multilayered Wood Flooring from the People's Republic of China* ("*Preliminary Results*"), 86 Fed. Reg. 73,252 (Dep't of Commerce Dec. 27, 2021) (preliminary results of the antidumping duty administrative review, preliminary determination of no shipments, and rescission of review, in part; 2019–2020) and accompanying Decision Memorandum for the Preliminary Results of Antidumping Administrative Review ("PDM") at 17, PR 213. Commerce used Malaysian surrogate values because it determined that Brazilian surrogate values were not usable for oak and non-oak log inputs. *Jiangsu Senmao Bamboo & Wood Industry Co. v. United States* ("*Senmao I*"), 47 CIT __, 651 F. Supp. 3d 1348, 1357 (2023) (citing PDM at 17).

Commerce also adjusted the Brazilian surrogate values for plywood by excluding data that it determined to be incorrect regarding the quantity of plywood. IDM at 9. Commerce determined that the Spanish import data for 2020 were incorrect because the data reported the same quantity of plywood in cubic meters ("m^3") as it did in kilograms ("kg"). *Id.* Because the m^3 unit measures volume and the kg unit measures mass, Commerce concluded that it was "illogical for the Spanish import data to report the same quantity in these two different units of measure." *Id.* Commerce removed this line of data from its calculation. *Id.* at 9–10. Ultimately, Commerce calculated Senmao's antidumping duty margin at 39.27%. *Final Results*, 87 Fed. Reg. at 39,465.

In *Senmao I*, the Court held that Commerce failed to provide a reasonable explanation to justify departing from its established practice of using one surrogate country and failed to support its determination with substantial evidence. *Senmao I*, 47 CIT at __, 651 F. Supp. 3d at 1357. The Court found that Commerce did not cite any record evidence to support its determination that Brazilian surrogate values regarding oak log inputs were highly questionable, inadequate, or unavailable. *Id.* Commerce lacked a sufficient basis to substitute input data from a second surrogate country. *Id.* at 1357–58. The Court found that Commerce relied on Exhibit 9 of Multilayered Wood Flooring from the People's Republic of China: American Manufacturers of Multilayered Wood Flooring ("AMMWF") Surrogate Value Comments ("AMMWF Surrogate Value Comments") ("Exhibit 9"), when determining to strike Spanish import data but never placed the document on the record. *Id.* at __, 651 F. Supp. 3d at 1361; AMMWF Surrogate Value Cmts., PR 179–82.

Because Commerce failed to cite necessary record evidence, failed to provide adequate explanations, and failed to include cited evidence on the record, the Court remanded for Commerce to reconsider its determinations. *Senmao I*, 47 CIT at __, 651 F. Supp. 3d at 1358, 1361. The Court remanded for Commerce to reconsider its inclusion of Malaysian surrogate values for both oak and non-oak log inputs without providing a reasonable explanation for departing from the established practice of using one surrogate country or supporting its determination with substantial evidence. *Id.* at __, 651 F. Supp. 3d at 1357–59. The Court also directed Commerce to reconsider or further explain its adjustment of plywood surrogate values because Commerce cited evidence that was not on the record. *Id.* at __, 651 F. Supp. 3d at 1361.

On remand, Commerce continued to select Brazil as the primary surrogate country. *Remand Redetermination* at 5–6. Commerce also determined that it was appropriate to value Senmao's non-oak log inputs using Brazilian data and its oak log inputs using Malaysian data. *Id.* at 15. Commerce maintained that its initial determination to adjust the plywood surrogate values by removing erroneous data was reasonable. *Id.* at 15–16. Commerce stated that it complied with the Court's Order in *Senmao I* by attaching Exhibit 9 of AMMWF's Surrogate Value Comments, which Commerce had previously cited to and relied on, but did not include on the record before the Court. *Id.* at 15. Commerce revised the antidumping duty rate and assigned a 34.68% dumping margin to Senmao. *Id.* at 17.

Upon review of Commerce's remand redetermination, the Court held that similar defects remained in Commerce's analysis supporting its selection of Brazil as the primary surrogate country, its selection of Brazilian surrogate values for non-oak log inputs and Malaysian surrogate values for oak log inputs, and its adjustment of surrogate values for plywood. *Senmao II*, 48 CIT at __, 698 F. Supp. 3d at 1283–87. First, the Court held that Commerce failed, again, to cite any specific evidentiary documents on the record in support of its determination that Brazil was the appropriate primary surrogate country. *Id.* at __, 698 F. Supp. 3d at 1283–84. Instead, Commerce cited to its own agency filings, such as its Preliminary Determination Memorandum, which is not evidence. *Id.* at __, 698 F. Supp. 3d at 1283. The Court remanded this issue for further reconsideration. *Id.* at __, 698 F. Supp. 3d at 1284.

Next, because the Court remanded Commerce's determination to select Brazil as the primary surrogate country due to Commerce's failure to cite substantial evidence, it refrained from opining on

whether Commerce's determination to use Malaysia as a secondary surrogate country to value oak log inputs was supported by substantial evidence. *Id.* at __, 698 F. Supp. 3d at 1285.

Lastly, the Court held that Commerce failed to provide a reasonable explanation for its adjustment of the surrogate value for plywood. *Id.* at __, 698 F. Supp. 3d at 1286. The Court reviewed the newly provided exhibits that Commerce previously relied on but were not on the record. *Id.* at __, 698 F. Supp. 3d at 1285–86. The Court found that Commerce did not identify with specificity the information within these exhibits that supported its conclusion that it was illogical for the Spanish m^3 and kg values to be expressed in the same quantity. *Id.* at __, 698 F. Supp. 3d at 1286. The Court also noted that Commerce removed the erroneous data without providing the Parties an opportunity to submit corrected data. *Id.* at __, 698 F. Supp. 3d at 1286–87. The Court suggested that Commerce consider providing the Parties with an opportunity to submit corrected information for a more accurate dumping margin calculation. *Id.* at __, 698 F. Supp. 3d at 1287. The Court remanded this issue for further reconsideration. *Id.*

Now before the Court is Commerce's *Second Remand Redetermination*. In its *Second Remand Redetermination*, Commerce maintained that Brazil was the appropriate primary surrogate country and offered no changes to its determination on this issue. *Second Remand Redetermination* at 5–8. Commerce asserted that it "provided the Court with a more detailed discussion of evidence relating to Commerce's criteria that led Commerce to the conclusion that Brazil and Malaysia fulfilled the surrogate country criteria and to select Brazil as the primary surrogate country." *Id.* at 5.

In regard to its adjustment of the surrogate value for plywood, Commerce reiterated "that removing this erroneous [Spanish data], which is limited to a single line for a single month and does not affect data from any country except Spain, results in a more reliable and accurate dataset." *Id.* at 9. Commerce acknowledged that it did not act upon this Court's suggestion to use corrected data. *Id.* at 24.

Senmao filed Plaintiff's Comments in Opposition to Remand Redetermination. Pl.'s Cmts. Opp'n Remand Redetermination ("Pl.'s Cmts."), ECF No. 68. Plaintiff-Intervenor Lumber Liquidators Services, Inc. ("Plaintiff-Intervenor" or "Lumber Liquidators") filed Lumber Liquidators' Comments in Opposition to the Remand Redetermination. Pl.-Interv.'s Cmts. Opp'n Remand Redetermination ("Pl.-Interv.'s Cmts."), ECF No. 69. Defendant United States ("Defendant"

or "Government") filed Defendant's Response to Comments on Remand Results. Def.'s Resp. Cmts. Remand Results ("Def.'s Resp."), ECF No. 70.

JURISDICTION AND STANDARD OF REVIEW

The U.S. Court of International Trade has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting the final results in an administrative review of an antidumping duty order. The Court shall hold unlawful any determination found to be unsupported by substantial evidence on the record or otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i). The Court also reviews determinations made on remand for compliance with the Court's remand order. *Ad Hoc Shrimp Trade Action Comm. v. United States*, 38 CIT 727, 730, 992 F. Supp. 2d 1285, 1290 (2014), *aff'd*, 802 F.3d 1339 (Fed. Cir. 2015).

DISCUSSION

I. Legal Framework

Antidumping duties are calculated as the difference between the normal value of subject merchandise and the export price or the constructed export price of the subject merchandise. 19 U.S.C. § 1673. To determine the normal value of the subject merchandise in a nonmarket economy, Commerce must calculate surrogate values using "the best available information regarding the values of such factors in a [comparable] market economy." *Id.* § 1677b(c). In doing so, Commerce relies on one or more market economy countries that are (1) "at a level of economic development comparable to that of the nonmarket economy country," and (2) "significant producers of comparable merchandise." *Id.* § 1677b(c)(4). Commerce's task is to "attempt to construct a hypothetical market value" of the subject merchandise in the nonmarket economy. *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1375 (Fed. Cir. 1999). When Commerce determines that there is more than one country at the same level of economic development as the nonmarket economy country and is a significant producer of comparable merchandise, Commerce will consider the quality and availability of the surrogate value data. *Fujian Lianfu Forestry Co. v. United States*, 33 CIT 1056, 1075, 638 F. Supp. 2d 1325, 1347 (2009).

Commerce's regulatory preference is to value all factors of production with surrogate values from a single surrogate country. 19 C.F.R. § 351.408(c)(2); *see e.g., Jiaxing Brother Fastener Co. v. United States*, 822 F.3d 1289, 1302 (Fed. Cir. 2016). Commerce may use a second

surrogate country if data from the primary surrogate country are unavailable or unreliable. Import Admin. Policy Bull. No. 04.1: Non-Market Economy Surrogate Country Selection Process ("Policy Bull. No. 04.1") (Dep't of Commerce Mar. 1, 2004). Commerce may depart from its single country preference if the data from a single surrogate country are "demonstrably aberrational as compared to certain benchmark prices, and alternative data sources could be better corroborated." *Peer Bearing Co.-Changshan v. United States*, 35 CIT 103, 119, 752 F. Supp. 2d 1353, 1369–72 (2011).

In evaluating surrogate value data, Commerce considers several factors, including whether the surrogate values are publicly available, contemporaneous with the period of review, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued. Policy Bull. No. 04.1; *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (citing the same factors).

Commerce is required by statute to value a respondent's factors of production using the "best available information." 19 U.S.C. § 1677b(c)(1)(B). Commerce has a duty "to determine dumping margins as accurately as possible." *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995) (internal quotation marks and citation omitted). The reviewing court must consider "the record as a whole, including that which 'fairly detracts from its weight.'" *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1351 (Fed. Cir. 2006).

When making its determinations, Commerce abuses its discretion if its "decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors." *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005). To be in accordance with law, Commerce's actions must be "reasonable under the terms of the relevant statute." *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 24 CIT 485, 488, 102 F. Supp. 2d 486, 489 (2000). Substantial evidence is "more than a mere scintilla" and has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). The record supporting Commerce's decision must support a "rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

II. Selection of Brazil as the Primary Surrogate Country

The Court observes that the arguments regarding the selection of Brazil as the primary surrogate country are essentially a dispute as to whether Commerce used the "best available information" pursuant to 19 U.S.C. § 1677b(c).

In its *Second Remand Redetermination*, Commerce stated that:

> both Brazil and Malaysia are suitable primary surrogate countries because they fulfill the above-mentioned criteria and the record contains usable data for valuing the vast majority of Senmao's FOPs. However, we are continuing to select Brazil as the primary surrogate country based on the quality of data because the Brazilian financial statement on the record is preferable to the Malaysian financial statement for the purpose of the financial ratios used in the normal value calculation.

Second Remand Redetermination at 7–8. Commerce explained that the Brazilian financial statements were for more comparable products of laminate flooring and were contemporaneous with the period of review. *Id.* at 7. Commerce also stated that it determined that:

> the Brazilian SV for oak logs [were] unavailable, [and] the record only contains usable data from Malaysia for one species of log that make up Senmao's two oak log inputs: Malaysian HS 4403.91.1000: "Oak Wood In The Rough." The Brazilian HS basket category is left to value the remaining five species of logs used to produce the veneers in Senmao's production process.

Id. at 15. Further, Commerce stated that, "[i]n addition to the lack of a specific fiberboard SV, Malaysia suffers an additional and important deficiency as a potential surrogate country in that, as noted above, it does not have contemporaneous surrogate financial statements from which to derive surrogate financial ratios." *Id.* at 18. Commerce summarized that:

> we continue to find the data to be the best available information because it comes from the primary surrogate country and fulfills Commerce's criteria. In contrast, [the] Malaysian financial statement is less specific to high density fiberboard that Senmao uses and lacks a contemporaneous financial statement. Therefore, based on the totality of the SV data and the weighing of these factors, we find that the quality of data and financial statements in Brazil favors selecting Brazil over Malaysia as the primary surrogate country.

Id. at 19.

Plaintiff and Plaintiff-Intervenor contend that Commerce's determination to select Brazil as the primary surrogate country, while also rejecting or adjusting Brazilian data for the primary inputs (valuing Plaintiff's log inputs using Malaysian data and adjusting Brazilian plywood data) is not in accordance with law or supported by substantial evidence. Pl.'s Cmts. at 3–12; Pl.-Interv.'s Cmts. Plaintiff avers that Malaysia should have been selected as the single primary surrogate country because Commerce could have relied on Malaysian data without substitution or manipulation. Pl.'s Cmts. at 4–5. Plaintiff highlights that Commerce does not explain why the Malaysian financial statements are unusable in this case. *Id.* at 5. Senmao argues that Commerce's *Second Remand Redetermination* is not supported by substantial evidence or in accordance with law. *Id.* at 3–12.

Commerce must determine what set of data represents the "best available information." *Home Meridian Int'l, Inc. v. United States*, 772 F.3d 1289, 1294 (Fed. Cir. 2014). The *Home Meridian* court explained that "[t]he data on which Commerce relies to value inputs must be the 'best available information,' but there is no requirement that the data be perfect." *Id.* at 1296.

In support of its selection of Brazil as the primary surrogate country, Commerce explained that the Brazilian financial statements on the record were preferable to the Malaysian financial statement for the purpose of the financial ratios used in the normal value calculation because the Brazilian financial statements were for more comparable products of laminate flooring and were contemporaneous with the period of review. *Second Remand Redetermination* at 7.

In evaluating surrogate value data, Commerce considers several factors, including whether the surrogate values are publicly available, contemporaneous with the period of review, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued. Policy Bull. No. 04.1. Here, Commerce apparently gave considerable weight to contemporaneity, which is a factor that Commerce may consider in its assessment of "best available information." *See Home Meridian*, 772 F.3d at 1294. Commerce also gave weight to the factor of "specific to the inputs being valued." *Second Remand Redetermination* at 6–7. Because Commerce properly considered that the Brazilian financial statements were contemporaneous with the period of review and specific to the inputs being valued according to regulatory policy reflected in Policy Bulletin No. 04.1, the Court concludes that Commerce's selection of the Brazilian

financial statements as the "best available information" for surrogate financial statements was in accordance with law and supported by substantial evidence.

19 C.F.R. § 351.408(c) provides that, "[f]or purposes of valuing the factors of production, . . . [Commerce] normally will value all factors in a single surrogate country." 19 C.F.R. § 351.408(c)(2). Commerce explained that when promulgating its regulations, the preference for a single country is meant to prevent parties from "margin shopping," and Commerce may depart from its regulatory preference for a single surrogate country when Commerce determines that the "accuracy of available information regarding prices for particular factors in the surrogate country is 'highly questionable,'" in which case Commerce may reject the questionable values and use data from a second country. *Antidumping Duties; Countervailing Duties*, 61 Fed. Reg. 7308, 7345 (Dep't of Commerce Feb. 27, 1996). Commerce may use a secondary surrogate country if financial data are "inadequate or unavailable." Policy Bull. 04.1 ("After all, a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.").

With respect to Commerce's determination to use both Malaysian and Brazilian surrogate value data, Plaintiff challenges Commerce's use of data from two different countries, particularly in light of Commerce's established preference for a single surrogate country. Pl.'s Cmts. at 6–7. Commerce determined on second remand that the Brazilian surrogate value for oak logs were unavailable, and the only usable data on the record from Malaysia are "for one species of log that make up Senmao's two oak log inputs: Malaysian HS 4403.91.1000: 'Oak Wood In The Rough.' The Brazilian HS basket category is left to value the remaining five species of logs used to produce the veneers in Senmao's production process." *Second Remand Redetermination* at 15. Further, Commerce stated that, "[i]n addition to the lack of a specific fiberboard SV, Malaysia suffers an additional and important deficiency as a potential surrogate country in that, as noted above, it does not have contemporaneous surrogate financial statements from which to derive surrogate financial ratios." *Id.* at 18. Commerce explained that it considered the Brazilian surrogate value data to be:

> the best available information because it comes from the primary surrogate country and fulfills Commerce's criteria. In contrast, Malaysian financial statement is less specific to high density fiberboard that Senmao uses and lacks a contemporaneous financial statement. Therefore, based on the totality of the SV

> data and the weighing of these factors, we find that the quality of data and financial statements in Brazil favors selecting Brazil over Malaysia as the primary surrogate country.

Id. at 19. Commerce stated that both the Brazilian and Malaysian SV data were publicly available, contemporaneous with the period of review, were representative of broad market averages, and were tax- and duty-exclusive. *Id.* at 6.

Commerce explained that it "used Malaysian SV data to value Senmao's oak log inputs" because "the best available information for valuing" factors of production are "product-specific, representative of a broad-market average, publicly available, contemporaneous with the [period of review], and exclusive of taxes and duties." *Id.* at 12. On second remand, Commerce "reconsidered how it valued Senmao's log inputs and ultimately found that the Brazilian SV for oak logs was unavailable based on Brazil's historical import data." *Id.* at 13–14 (citing AMMWF Rebuttal SV Cmts. at Ex. 1 (historical Brazilian import data), PR 186). Commerce explained that it relied on the descriptions of Senmao's inputs as "European oak" and "red oak" contained in the cited documents and determined that the best available information to value these two inputs was the Malaysian data, which was "most specific to Senmao's oak wood inputs." *Id.* at 14 (citing AMMWF SV Cmts. at Ex. 2; Senmao Sec. C & D Questionnaire Resp. at Ex. D-5, PR 145).

Commerce noted that the Malaysian data for "European oak" and "red oak" were most specific to Senmao's oak wood inputs, but the Brazilian data for the remaining five wood inputs (non-oak logs) were not "unavailable, inadequate or unreliable," and thus Commerce relied on record evidence of the Brazilian subheading HS 4403.99: "Wood In The Rough" to value the remaining log types. *Id.* at 14–15. Commerce determined that the Brazilian SV data for oak logs was unavailable, and thus "the record only contains usable data from Malaysia for one species of log that make up Senmao's two oak log inputs." *Id.* at 15. Additional record evidence contained Brazilian SV data pertaining to fiberboard, a "major input that is used as a core material in the production of the subject merchandise." *Id.* at 17 (citing Senmao Sec. C & D Questionnaire Resp. at Sec. C at 10, Sec. D at 5; Senmao SV Cmts. at Exs. 1, 2, PR 176–77; AMMWF's SV Cmts. at Exs. 1, 2). Commerce summarized that, "based on the totality of the SV data and the weighing of these factors, we find that the quality of data and financial statements in Brazil favors selecting Brazil over Malaysia as the primary surrogate country." *Id.* at 19.

This Court remanded because Commerce previously failed to provide sufficient explanations for its determinations and failed to cite any specific documents on the record in support of its determination that Brazil was the appropriate primary surrogate country. *Senmao II*, 48 CIT at __, 698 F. Supp. 3d at 1283–84. Commerce has cured these problems in its *Second Remand Redetermination*. Because Commerce considered the proper factors as required by regulatory policy reflected in Policy Bulletin No. 04.1, articulated its analysis under the statutory obligation to consider the "best available information," and cited record evidence in support of its "best available information" determinations, the Court concludes that Commerce's selection of financial statements and surrogate value inputs from Brazil as the primary surrogate country, while using Malaysian data for two oak inputs, was in accordance with law and supported by substantial evidence. The Court sustains Commerce's determinations on the issue of selection of Brazil as the primary surrogate country and the use of two surrogate countries for surrogate value inputs.

III. Adjustment of Surrogate Values for Plywood

This Court remanded the adjustment of surrogate values for plywood because Commerce failed to provide an adequate explanation for the adjustment, and the Court suggested that Commerce provide the parties with an opportunity to correct any erroneous data. *See id.* at __, 698 F. Supp. 3d at 1286–87.

Commerce provided additional explanation on second remand that the erroneous surrogate value data was contained in the Global Trade Atlas ("GTA"), which was publicly available, contemporaneous with the period of review, and "[s]pecifically, the GTA SV data represent broad market averages because they encompass the average prices for inputs imported into Brazil and Malaysia during the [period of review]. Further, GTA data have previously been found to be tax and duty-exclusive, and no parties have argued otherwise." *Second Remand Redetermination* at 6. The Global Trade Atlas is typically viewed as a reputable and reliable source of evidence in surrogate value cases, but Commerce became aware that "this particular component of the Brazilian SV is clearly incorrect." IDM at 9. Commerce reiterated in the *Second Remand Redetermination* that one "erroneous line item in the Brazilian import data, which reported the same quantity figure for kgs and m^3 represented imports from Spain for a single [period of review] month – January 2020. We agree with Senmao that no party has argued that this data is not erroneous." *Second*

Remand Redetermination at 23. In other words, it is undisputed by the Parties that the GTA surrogate value data for imports into Brazil for the period of review is incorrect.

Commerce explained on second remand that:

> In the Final Results, Commerce adjusted the composite Brazilian SV for plywood by removing the Spanish import data for January 2020 from the average unit value because this single line of data (Spanish data) was erroneous. The January 2020 import data used for the purpose of calculating the SV for plywood reported quantities for imports from Spain under HS subheading 4412.33 in both cubic meters (m^3) and kilograms (kg). However, the quantity of plywood expressed in m^3 was the same as the quantity expressed in kg, which is in error because the former measures volume and the latter measures weight.
>
> * * *
>
> Commerce made its determination that the Spanish import plywood values were erroneous based on the Petitioner SV Comments at Exhibit 9, which contains information on the density of wood species expressed in m^3 and kg. . . . The equation for density for the Spanish import data, as indicated in the right-side column of Exhibit 9A, is kg/m^3. If both m^3 and kg are equal values, it would result in a density of one, which is erroneous considering the values in the log density table spanning the entirety of Exhibit 9A all range in the hundreds. Additionally, in Exhibit 9B, the chart at the bottom of page 36 titled Weight and Volume includes comparisons of kg/m^3 and m^3/ton for various FOPs, one of which is plywood with a density value of 650, demonstrating that m^3 and kg are discrete units that cannot be of equal value especially when calculating plywood density. . . . This flaw only affects a single line [of] Spanish data in the entire dataset, which calls into question the reliability of the value in this specific line of data. We find that removing this erroneous value, which is limited to a single line for a single month and does not affect data from any country except Spain, results in a more reliable and accurate dataset.

Id. at 8–9 (citing AMMWF's SV Cmts. at Exs. 9, 9A, 9B). Commerce stated that the number one should have instead been in the hundreds if it were mathematically and factually correct. *Id.* at 9. Commerce

contended that using the erroneous dataset of one would have resulted in a more inaccurate result. *Id.* Thus, Commerce determined that the "best available information" would result from deleting the erroneous data rather than using the clearly wrong data. *Id.* Defendant argues that removing the erroneous datapoint, "which only represents a single month of imports from a single country, results in a more reliable and accurate dataset." Def.'s Resp. at 18.

The erroneous January 2020 Spanish import data in the Global Trade Atlas was likely the result of clerical error. *See* IDM at 10. The Court observes that because the Global Trade Atlas is a third-party publication that is a publicly available source of information, there would be no opportunity for the Parties to actually fix the January 2020 Spanish import data in the Global Trade Atlas publication. Because the error exists in a third-party publication, Commerce determined that it had a binary choice to either use the erroneous data or delete the erroneous number from its calculations.

Commerce must determine what set of data represents the "best available information." *Home Meridian Int'l*, 772 F.3d at 1294; 19 U.S.C. § 1677b(c)(1). The *Home Meridian* court explained that "[t]he data on which Commerce relies to value inputs must be the 'best available information,' but there is no requirement that the data be perfect." *Home Meridian*, 772 F.3d at 1296. When making its determinations, Commerce abuses its discretion if its "decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors." *Star Fruits S.N.C.*, 393 F.3d at 1281.

Here, the Global Trade Atlas data for imports of plywood to Brazil was not only imperfect, but it was also objectively incorrect. Using the incorrect data for imports from Spain to Brazil for January 2020 would result in using the number one, rather than a number that should be in the hundreds, which would artificially lower the surrogate value of Brazilian plywood. But simply removing the January 2020 import data led to a distortion that increased the Brazilian plywood surrogate value by 453%. *Senmao II*, 48 CIT at __, 698 F. Supp. 3d at 1285; Pl.'s Cmts. at 9–11.

This case presents an unfortunate choice of Commerce's own making. Both using the data and deleting the data would produce aberrational, inaccurate results. The Government contends that "accuracy," as defined by the U.S. Court of Appeals for the Federal Circuit

("CAFC") in the context of determinations from Commerce, is a result that is "correct as a mathematical and factual matter, thus supported by substantial evidence." Def.'s Resp. at 18 (quoting *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1344 (Fed. Cir. 2016)). Under the CAFC's definition of accuracy, neither result—import data with or without the erroneous January 2020 entry—would be accurate or supported by substantial evidence. *See Nan Ya Plastics Corp.*, 810 F.3d at 1344.

The Court disagrees with Commerce's contention that "removal of the erroneous plywood line item results in a more accurate dataset," *Second Remand Redetermination* at 24, and the Court cannot sustain Commerce's deletion of the Spanish import data that produced an objectively incorrect and 453% distorted value as reasonably the "best available information." Commerce abused its discretion when it deleted the data and created a 453% distortion under the guise of "best available information." The deletion of the Spanish import data was unreasonable, an abuse of discretion, not in accordance with law, and not supported by substantial evidence. Commerce has now made this adjustment three times. The Court orders that Commerce may not make this unreasonable and unlawful adjustment a fourth time on remand.

Commerce asserted in the *Second Remand Redetermination* that "the Court [in *Senmao II*] did not order Commerce to reopen the record but included it as an option to consider" and noted that "it is not Commerce's normal practice to reopen the record on remand." *Id.* Commerce declined to reopen the record on second remand.

Because of the unusual situation in this case, the Court now orders Commerce to reopen the record on third remand to obtain accurate data regarding the correct surrogate values for imported plywood. While courts are generally reluctant to order an agency to reopen its record and admit new documents, there are two exceptions to this rule. *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1277–78 (Fed. Cir. 2012). One exception is for cases, just as this one, "when the underlying agency decision was based on 'inaccurate data' that the 'agency generating those data indicates are incorrect.'" *Id.* (quoting *Borlem S.A.-Empreedimentos Industriais v. United States*, 913 F.2d 933, 937 (Fed. Cir. 1990)).

Commerce admits that the Spanish import data for January 2020 is inaccurate. *Second Remand Redetermination* at 23. Removing this

line item is equally inaccurate. The Court will not uphold as reasonable an agency's "determination that is based on data that the agency generating those data indicates are incorrect." *Borlem S.A.-Empreedimentos Industriais*, 913 F.2d at 937. "Congress' desire for speedy determinations on dumping matters should not be interpreted as authorizing proceedings that are based on inaccurate data." *Id.* The Court will "not require, nor would it make sense to require, reliance on data which might lead to an erroneous result." *Id.*

If corrected January 2020 data is unavailable as the Parties have indicated, then the Court suggests that Commerce might consider substituting Spanish import data of plywood to Brazil from January 2019 or January 2021 from the Global Trade Atlas (which would require an arguably more reasonable adjustment), or Commerce might consider using Global Trade Atlas data for surrogate values of imported plywood to Malaysia from the period of review instead (which presumably would not contain any clerical errors and would not need to be adjusted), or another reasonable option, with the goal of approximating a calculation that is more objectively accurate, less distortive, and closer to the "best available information." In any event, Commerce's deletion of the January 2020 dataset is unreasonable, grossly distortive by 453%, not in accordance with law, and clearly not the "best available information."

Because Commerce relied on objectively flawed evidence in its surrogate value calculation for plywood, the Court holds that Commerce's determination on this issue was not in accordance with law and not supported by substantial evidence.

CONCLUSION

For the foregoing reasons, the Court sustains Commerce's determination to select Brazil as the primary surrogate country and remands Commerce's adjustment of the surrogate value for plywood with an order to reopen the record consistent with this Opinion. Accordingly, it is hereby

ORDERED that Commerce's Final Results of Redetermination Pursuant to Second Remand Order, ECF No. 66–1, are remanded to Commerce for reconsideration consistent with this Opinion; and it is further

ORDERED that this case shall proceed according to the following schedule:

(1) Commerce shall file the remand determination on or before April 18, 2025;

(2) Commerce shall file the administrative record on or before May 2, 2025;

(3) Comments in opposition to the remand determination shall be filed on or before June 2, 2025;

(4) Comments in support of the remand determination shall be filed on or before July 2, 2025; and

(5) The joint appendix shall be filed on or before July 9, 2025.

Dated: February 18, 2025
New York, New York

/*s*/ *Jennifer Choe-Groves*
JENNIFER CHOE-GROVES, JUDGE

Index

Customs Bulletin and Decisions
Vol. 59, No. 10, March 5, 2025

U.S. Customs and Border Protection

General Notices

U.S. Court of International Trade
Slip Opinions

GPO U.S. G.P.O.: 2025—431-372/30117