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Consol. Court No. 14-00224

SeAH Steel VINA Corporation v. United States, *et al*.

Consol. Court No. 14-00224 (June 22, 2020)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. Summary

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (CIT) in *SeAH Steel VINA Corporation v. United States, et al.*, Consol. Court No. 14-00224 (June 22, 2020) (*Remand Order*). These results of redetermination address one issue in the less-than-fair-value (LTFV) investigation of oil country tubular goods (OCTG) from the Socialist Republic of Vietnam (Vietnam).[1] The Court of Appeals for the Federal Circuit (CAFC) affirmed in part, and reversed in part, the judgment of the CIT. Specifically, the CAFC reversed and remanded the CIT's judgment sustaining Commerce's calculation of brokerage and handling (B&H) costs. As we explain below, we have complied with the CIT's *Remand Order* by revising our B&H calculation.

On September 2, 2020, Commerce released a draft of its redetermination to interested parties and gave them an opportunity to comment on the Draft Redetermination.[2] On September

[1] *See Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 41973 (July 18, 2014) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM); and *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014) (*Amended Final Determination*).
[2] *See* Memorandum, "Draft Results of Redetermination Pursuant to Court Remand," dated September 2, 2020 (Draft Redetermination).

9, 2020, SeAH Steel VINA Corporation (SSV)[3] and U.S. Steel Corporation (the petitioner) submitted comments on the Draft Redetermination.[4]

II. Background

On July 18, 2014, Commerce published the *Final Determination*, in which it made an affirmative determination of sales at LTFV, and on September 10, 2014, Commerce published the *Amended Final Determination*.[5] The sole respondent in the investigation, SSV, challenged Commerce's B&H methodology before the CIT. On August 31, 2016, the CIT remanded the B&H issue to Commerce for further explanation of its methodology.[6] On September 28, 2017, after reviewing Commerce's redetermination, the CIT again remanded the B&H issue to Commerce to respond to several critiques that SSV had made of Commerce's methodology.[7] On August 13, 2018, the CIT sustained Commerce's B&H calculation methodology as supported by substantial evidence.[8] However, on January 27, 2020, the CAFC reversed the CIT ruling concerning B&H costs, with instructions to the CIT to remand the B&H issue to Commerce.[9]

III. Analysis

B&H is a cost that SSV incurs in Vietnam on both its imports of hot-rolled coil (HRC), the main input in the production of OCTG, and its exports of OCTG. Import B&H constitutes a

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[3] *See* SSV's Letter, "Comments on Draft Redetermination in Third Remand of Less-than-Fair-Value Determination for Oil Country Tubular Goods from Vietnam," dated September 9, 2020 (SSV Comments).
[4] *See* Petitioner's Letter, "Oil Country Tubular Goods from the Socialist Republic of Vietnam: Domestic Interested Parties' Comments Upon Commerce's Draft Results of Redetermination Pursuant to Court Remand," dated September 9, 2020 (Petitioner's Comments).
[5] *See Final Determination*; and *Amended Final Determination*.
[6] *See SeAH Steel VINA Corp. v. United States*, 182 F. Supp. 3d. 1316 (CIT 2016).
[7] *See SeAH Steel VINA Corp. v. United States*, 269 F. Supp. 3d 1335 (CIT 2017).
[8] *See SeAH Steel VINA Corp. v. United States*, 332 F. Supp. 3d 1314 (CIT 2018).
[9] *See SeAH Steel VINA Corp. v. United States*, *et al.*, 950 F. 3d 833 (Fed. Cir. 2020) (*SeAH VINA*).

component of total normal value.[10] Export B&H is subtracted from gross U.S. price in the calculation of net U.S. price.[11]

In the *Final Determination* and *Amended Final Determination*, and in all subsequent litigation of this proceeding, we calculated B&H costs by using surrogate values derived from *Doing Business India: 2014* (*Doing Business*).[12] Specifically, we totaled the three B&H categories, *i.e.*, "document preparation"; "customs clearance and technical control"; and "ports and terminal handling"; as provided in *Doing Business*. We then calculated the per-unit B&H cost by dividing the aggregate B&H costs by 10 metric tons (MT), for both import B&H and export B&H.[13] We explained our reasons for using the 10 MT denominator by quoting from earlier cases in which Commerce relied on 10 MT as the denominator, and we stated:

> {Commerce} finds that it should continue to use the weight of 10 MT for a standard container because this is the weight used in {the World Bank's *Doing Business 2012: Thailand*} publication and thus the SV calculation must be internally consistent with the original data's reporting basis. {Commerce} finds that mixing different sources of data in the B&H calculation would add inconsistency to the ratio calculation, which would yield a distorted result.[14]

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[10] *See Final Determination* IDM at Comment 10 ("We agree with petitioner that we should add B&H and import fees to the market-economy purchase price of the hot-rolled coils because the record indicates that SSV incurred cost for B&H and SSV does not dispute this cost.").

[11] *See* section 772(c)(2)(A) of the Tariff Act of 1930, as amended; and, *e.g.*, *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 925 F. Supp. 2d 1332, 1347 (CIT 2013) ("When calculating the export price, Commerce deducts 'the amount, if any, included in such price, attributable to any additional costs, charges, or expenses. . . which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States," such as brokerage and handling fees.").

[12] *See* Petitioner's Letter, "Oil Country Tubular Goods from Vietnam," dated January 22, 2014 (Petitioner Surrogate Value Submission) at Tab H, Attachment 2, and Tab I, Attachment 2.

[13] *See* Memorandum, "Analysis for the Final Determination of the Antidumping Duty Investigation of Certain Oil Country Tubular Goods (OCTG) from the Socialist Republic of Vietnam (Vietnam) SeAH Steel VINA Corporation (SeAH VINA)," dated July 16, 2014 at Attachment II (detailing the calculation for import B&H); and Memorandum, "Surrogate Values for the Preliminary Determination," dated February 20, 2014 at Exhibit 9 (detailing the calculation for export B&H).

[14] *See Final Determination* IDM at Comment 1 (citing *Certain Steel Threaded Rod from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013), and accompanying IDM at Comment 7).

We also stated:

> Using 10 MT in the per-unit calculation maintains the relationship between cost and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), makes use of data from the same source, and is consistent with {Commerce's} practice.[15]

As explained above, the CIT affirmed this prior calculation as supported by substantial evidence. However, in *SeAH VINA*, the CAFC examined the B&H costs as reported in *Doing Business*, and determined that "document preparation" and "customs clearance and technical control" costs[16] were reported on a per-shipment basis, and that *Doing Business* does not describe costs as dependent on the weight of the container as Commerce had argued.[17] Thus, the CAFC determined that Commerce's assumption that *Doing Business* assumed a fixed weight for purposes of calculating B&H costs is without a reasonable basis.[18] Specifically, the CAFC cited *Dupont Teijin*, which states that "Commerce's {by-weight B&H allocation} methodology incorrectly assumes that a shipment weighing less will incur lower "document preparation" and customs clearance costs, while a shipment weighing more will incur higher preparation costs."[19] The CAFC also stated that Commerce's inference that the *Doing Business* calculation assumed a fixed weight for purposes of calculating B&H costs, such that price and weight are dependent upon one another, "simply is not representative of reality."[20] Therefore, the CAFC

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[15] *Id.* (citing *Certain Steel Nails from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013), and accompanying IDM at Comment 3).
[16] *See SeAH VINA*, 950 F.3d at 839 n.4 (stating that B&H costs are "costs for 'document preparation' and 'customs clearance and technical control' for SeAH's imported inputs and exported subject merchandise.").
[17] *Id.* at 846-47.
[18] *Id*.
[19] *Id.* (citing *Dupont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1351 (CIT 2014) (*DuPont Teijin)*)
[20] *Id.* (citing *Dupont Teijin*, 7. F. Supp. 3d at 1351 (quoting *CS Wind Vietnam Co. v. United States*, 971 F. Supp. 2d 1271, 1295 (CIT 2014))).

determined that Commerce's by-weight allocation methodology is not supported by substantial evidence, and reversed and remanded this issue.[21]

In light of the CAFC's holding in *SeAH VINA*, we reconsidered our B&H calculation and potential B&H data sources for this redetermination on remand. In addition to *Doing Business*, the record contains other possible sources with which to value B&H. One of them is the B&H costs that the Indian OCTG producers Jindal SAW, Ltd. (Jindal), and GVN Fuels Limited (GVN) reported in the antidumping investigation of OCTG from India.[22] However, the B&H costs from these companies that are on the record are limited to export B&H costs, and do not include import B&H costs. Therefore, we continue to find that relying on this source would not provide complete data for purposes of valuing B&H for this remand redetermination. Therefore, we continue to find that it is not the best information available on the record.

Another source for valuing B&H is the Oriental Overseas Container Line (OOCL) data that SSV placed on the record.[23] Commerce addressed the OOCL Data in the *Final Determination,* stating that "{t}he OOCL information SSV submitted is reflective of the prices charged by only one shipping company on only one date, which postdates the {period of investigation (POI)}. As such, the OOCL data do not constitute the contemporaneous, broad market average we seek when considering potential surrogate values."[24] However, as explained below, we have considered the OOCL data in determining a maximum container weight for

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[21] *Id.* at 848.
[22] *See* SSV's Letter, "Antidumping Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam — Factual Information to Rebut and Clarify Surrogate Value Information Filed by Petitioners," dated January 27, 2014, at Attachment 2.
[23] *See* SSV's Letter, "Antidumping Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam – Factual Information to Value Factors of Production Obtained from Non-Market Economy Suppliers," dated January 17, 2014 at Attachment 7 (containing "Documentation of Brokerage and Handling Rates from OOCL India Web-Site") (OOCL Data).
[24] *See Final Determination* IDM at Comment 1 (citing *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) and accompanying IDM at Comment 1).

purposes of calculating a per container cost for the "port and terminal handling" category of our B&H calculation because it is the only information on the record, apart from the 10 MT assumption in *Doing Business*, pertaining to the weight of a container. Nevertheless, for determining the costs of the three categories, Commerce has relied exclusively on *Doing Business.*

Commerce strives to select, to the extent practicable, surrogate values that are publicly available, product-specific, representative of a broad market average, contemporaneous with the period of review, and tax and duty exclusive.[25] In line with this practice, we continue to find that the data obtained from *Doing Business* are contemporaneous with the POI and are representative of a broad market average. The *Doing Business* data are also product-specific, publicly available, and free of taxes and duties. Therefore, we continue to find that *Doing Business* meets all of Commerce's criteria as a source for surrogate values, and we continue to find that it is the best information available for valuing B&H in this remand redetermination.[26] However, while we have continued to value B&H costs using surrogate values from *Doing Business*,[27] we have revised our calculation, which used 10 MT as the denominator, for purposes of calculating a B&H value for each metric ton of subject merchandise.

Under the calculation Commerce previously used in this investigation, Commerce converted the total B&H cost, separately for import B&H and export B&H, into a per-ton value based on 10 MT, the estimated weight of a twenty-foot container, by dividing the relevant costs by 10. Commerce next multiplied that value, the quotient, by the weight of each of SSV's

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[25] *See Jiaxing Brothers Fastener Co., Ltd. v. United States*, 822 F.3d 1289, 1293 (Fed. Cir. 2016); *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014); and Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004.
[26] *See Final Determination* and accompanying IDM at Comment 1.
[27] *See* Petitioner Surrogate Value Submission at Tab H, Attachment 2, and Tab I, Attachment 2.

shipments, which would result in a proportional increase in the B&H costs. If SSV, for instance, shipped five full, twenty-foot containers of subject merchandise, it would, under Commerce's previous methodology, incur "document preparation" and "customs clearance and technical control" costs proportional to the total weight of the five containers. Because the CAFC held that Commerce's "by-weight allocation methodology for B&H costs" as applied in the instant case, was unsupported by substantial evidence,[28] we revised our calculation for this redetermination.

To calculate "document preparation" and "customs clearance and technical control," for export B&H for this redetermination, we used the average per-shipment weight of SSV's OCTG shipments during the POI as the denominator in calculating the per-unit cost. For import B&H, we used the average weight of SSV's imports of HRC during the POI as the denominator for these two B&H cost categories. The CIT has called this methodology a "reasonable conversion methodology."[29] For the B&H cost category "port and terminal handling," for both export B&H and import B&H, we used the maximum container weight of a 20-foot container because "port and terminal handling" costs are incurred on a per-container basis, rather than a per-shipment basis.[30] Accordingly, based on these determinations, we calculated B&H costs as described below:

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[28] *See SeAH VINA*, 950 F. 3d at 846.
[29] *See Dupont Teijin*, 7 F. Supp. 3d at 1352; and *CS Wind Vietnam Co., Ltd. v. United States*, 971 F. Supp. 2d 1271, 1295 (CIT 2014).
[30] *See* OOCL Data.

Export B&H

- For the B&H cost categories “document preparation” and “customs clearance and technical control,” we used, as the denominator, SSV’s average export shipment volume of OCTG during the POI as provided on its customs clearance forms.[31]
- For the B&H cost category “port and terminal handling,” we used 21.727 MT (the maximum cargo weight of a 20-foot container)[32] as the denominator.

Import B&H

- For the B&H cost categories “document preparation” and “customs clearance and technical control,” we used SSV’s average import volume of HRC during the POI as the denominator.[33]
- For the B&H cost category “port and terminal handling,” we used 21.727 MT (the maximum cargo weight of a 20-foot container) as the denominator.

We find this methodology to be consistent with the CAFC decision because we have relied on a denominator for “document preparation” and “customs clearance and technical control” that seeks to estimate a cost based on the average shipment volume, and a denominator for “port and terminal handling” that seeks to estimate a cost based on the average container volume. We also note that this methodology is consistent with our methodology in the 2017-2018 administrative review of this order.[34]

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[31] For our calculation of SSV’s average export shipment volume, *see* Memorandum, “Analysis for the Preliminary Redetermination on Remand in the Antidumping Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam; SeAH Steel VINA Corporation,” dated September 2, 2020 (Draft Redetermination Analysis Memorandum).

[32] *See* SSV’s Letter, “Factual Information Relating to the Valuation of Factors of Production Obtained from Non-Market-Economy Suppliers, dated January 14, 2014, at Attachment 7 (containing Documentation of Open Container Dimensions).

[33] For our calculation of SSV’s average HRC import volume, *see* Draft Redetermination Analysis Memorandum.

[34] *See Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41552 (July 10, 2020), and accompanying IDM at Comment 1.

IV. Interested Party Comments

Comment 1: B&H Calculation Methodology

Petitioner Comments

- In the Draft Redetermination, Commerce simply applied the methodology that had been suggested by SSV in prior submissions. However, Commerce's method of allocating "customs clearance and technical control" and "port and terminal handling" expenses is inconsistent with the procedural history of this case, and is unsupported by record evidence. Moreover, in *SeAH VINA*, the CAFC provided Commerce with ample discretion to choose an alternative methodology, and a better allocation methodology exists on the record.
- With respect to "document preparation" and "customs clearance and technical control," there is record evidence that these expenses are incurred on a per-container basis, and not on a per-shipment basis. Specifically:
  - The CAFC recognized that SSV's freight forwarder contract, which covers both "document preparation" and customs clearance, provides costs on a per-ton and a per-container basis.[35]
  - *Doing Business* states that "document preparation" and "customs clearance and inspection" costs are allocated on a U.S. dollar per container basis.[36]
- The CAFC did, however, state that *Doing Business* provides documents required "per shipment."[37] As such, while Commerce may conceivably allocate "document preparation" costs by the average per shipment weight, as it did in the Draft Redetermination, other record evidence supports the conclusion that "document preparation" is allocated on a per-container

[35] *See* Petitioner's Comments at 5 (citing *SeAH VINA*, 950 F.3d at 847).
[36] *Id*. (citing Petitioner Surrogate Value Submission at Tab H, Attachment 3 page 2).
[37] *Id*. (citing *SeAH VINA*, 950 F.3d at 846-47).

basis. With respect to "customs clearance and technical control," the above evidence clearly and consistently indicates that such expenses are incurred on a per-container basis. Therefore, at a minimum, in the final determination, Commerce should calculate "customs clearance and technical control" using the maximum container weight (27.727 MT) as the denominator, rather than shipment weight.

- With respect to "port and terminal handling," Commerce's decision to use the 27.727 MT denominator in the Draft Redetermination, rather than 10 MT, conflicts with the CAFC's analysis and remand.
  - The question of whether handling costs varied by weight was not even properly before the CAFC. In SSV's case brief,[38] SSV challenged only Commerce's allocation of "document preparation" and "customs clearance and technical control." As such, CAFC waived any challenge to Commerce's allocation of "port and terminal handling," and the CAFC never had occasion to consider that issue. The CAFC has stated, "{o}ur law is well established that arguments not raised in the opening brief are waived."[39] Accordingly, the CIT has held that where a "plaintiff did not raise this issue until after remand, the Court's instructions necessarily did not direct {Commerce} to reconsider {that issue}."[40] As such, the CAFC's remand order "necessarily did not direct" Commerce to reallocate port and terminal handling expenses, as that issue was not before the CAFC.

[38] *See* Memorandum, "OCTG from the Socialist Republic of Vietnam: Placing Case Brief on the Record," dated September 25, 2020 (SSV CAFC Brief).
[39] *Id.* at 9 (*SmithKline Beecham Corp. v. Apotex Corp*., 439 F.3d 1312, 1319 (Fed. Cir. 2006) (citing *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc*., 424 F.3d 1293, 1320-21 n.3 (Fed. Cir. 2005))).
[40] *Id.* (citing *Since Hardware Guangzhou Co. v. United States*, 49 F. Supp. 3d 1268, 1284 (CIT 2015) (quoting *Yantai Xinke Steel Structure Co. v. United States*, No. 10-00240, 2014 CIT LEXIS 39, at *28 (CIT 2014))).

- The CAFC's analysis confirms as much. Its repeated citations to *CS Wind* and *Dupont Teijin* refer exclusively to "document preparation and customs clearance costs."[41] Indeed, *CS Wind*, on which the CAFC heavily relies, expressly distinguishes "document preparation" costs from other B&H fees, stating: "Commerce has failed to explain why *document preparation* costs, as opposed to other B&H fees, would change depending on the size or weight of the shipment."[42] In short, the CAFC never addressed how "port and terminal handling" expenses might reasonably be allocated, but relied heavily on precedent that expressly distinguished "handling" from "document preparation" and customs clearance costs. Given that SSV did not appeal the "port and terminal handling" expense category, Commerce's recalculation impermissibly revisits a settled decision without seeking leave from the court to do so.
- The Draft Redetermination mentions that Commerce's treatment of "port and terminal handling" is consistent with how it handled these costs in the 2017-18 administrative review of OCTG from Vietnam.[43] However, Commerce handled these costs in this way only because of the CAFC ruling in *SeAH VINA*, [44] which, as explained above, is inapposite. Commerce should not blindly follow precedent from a subsequent

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[41] *Id*. (citing to *SeAH VINA* at 846-47; *Dupont Teijin* , 7 F. Supp. 3d at 1351-52 ("Commerce's B & H calculation rests on an assumption that the $210 for *document preparation* expenses and the $169 for *customs clearance* costs mentioned in the report was derived from a formula by which the exporter pays {these expenses} based on the weight of the goods, which simply is not representative of reality… Commerce has failed to explain why *document preparation* and *customs clearance* costs would change depending on the size or weight of the shipment..") (internal citations omitted) (emphasis supplied); *CS Wind*, 971 F. Supp. 2d at 1295 (CIT 2014) ("Underlying Commerce's calculation here must be an assumption that the $415 for *document preparation* mentioned in the report was derived from a formula by which the exporter pays for documents based on the weight of the goods, which simply is not reflective of reality.") (emphasis supplied)).
[42] *Id*. at 10 (citing *SeAH VINA*, 950 F.3d at 847-48).
[43] *Id.* (citing *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2017– 2018*, 85 FR 41552, and accompanying IDM at Comment 1).
[44] *Id*.

administrative review when that practice was founded on a fundamental misunderstanding of the relevant court opinion.

- One might (as the CAFC apparently did) assume that the cost of documentation does not increase with a shipment's weight because the difficulty of completing the documents appears not to change. However, this logic does not apply to the cost of physically moving, *i.e.*, handling, that same shipment. Indeed, common sense indicates that it costs more to handle a heavy container than it does to handle a light container. Indeed, given that the 10 MT assumption of *Doing Business* is, in the CAFC's reckoning, irrelevant to calculation of "document preparation" and "customs clearance," it must be relevant to the cost of handling (both at the port/terminal and inland), or *Doing Business* would not have bothered including such information or establishing the fact base.
- For these reasons, in its final redetermination on remand, Commerce should alter the approach it took in the Draft Redetermination, and use the container weight (*i.e.*, 10 MT) as specified in *Doing Business* to calculate a per-ton value for export and import "port and terminal handling."

No other interested parties commented on this issue.

Commerce Position:

We disagree with the petitioner with respect to the correct calculation of all three categories of B&H expenses. With respect to "document preparation," the petitioner has cited to a reference in *Doing Business* that indicates that document costs are incurred on a U.S. dollar per container basis.[45] However, we do not find the petitioner's citation conclusive because *Doing Business* also states "{a}ll documents required *per shipment* to export and import the goods are

[45] *See* Petitioner Comments at 5 (citing *Doing Business* in Petitioner Surrogate Value Submission at Tab H, Attachment 3 page 2).

recorded (Table A.1)," and that "{i}t is assumed that a new contract is drafted per shipment."[46] *Doing Business* also states that "{d}ocuments required for clearance by relevant agencies – including government ministries, customs, port authorities and other control agencies – are taken into account."[47] Additionally, "documents that are requested at the time of clearance but that are valid for a year or longer and do not require renewal per shipment… are not included."[48] We find additional guidance on this issue in the list of documents that *Doing Business* indicates are "Export documents" and "Import documents."[49] This list includes documents that are normally generated on per-shipment basis (*e.g.*, commercial invoice, bill of lading, packing list).[50] We determine therefore that it is reasonable to determine that the "document preparation" costs reported in *Doing Business* are costs incurred on a per-shipment basis.

We make the same determination with respect to "customs clearance and technical control." *Doing Business* states, "{d}ocuments required for *clearance* by relevant agencies – including government ministries, *customs*, port authorities and other control agencies - are taken into account."[51] The *Doing Business* reporting of customs clearance thus appears to some extent to overlap with that of "document preparation." As a result, we find that there is sufficient evidence on this record to suggest that customs clearance costs are reported in *Doing Business* on the same basis as "document preparation" costs, *i.e.*, a per-shipment basis.

Moreover, our understanding that "document preparation" and "customs clearance and technical control" are incurred on a per-shipment basis is supported by two CIT decisions, cited

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[46] *See* Petitioner Surrogate Value Submission at Tab H, Attachment 3 page 2, and Tab I, Attachment 3 page 2; *see also SeAH VINA*, 950 F. Supp. 3d at 846-47 (emphasizing that *Doing Business* records documents required *per shipment*).
[47] *See* Petitioner Surrogate Value Submission at Tab H, Attachment 3 page 2, and Tab I, Attachment 3 page 2.
[48] *Id*.
[49] *Id.* at Tab H, Attachment 2 page 2, and Tab I, Attachment 2 page 2.
[50] *Id.*
[51] *See* Petitioner Surrogate Value Submission at Tab H, Attachment 3 page 2, and Tab I, Attachment 3 page 2 (emphasis added).

by the CAFC in *SeAH VINA*. In *Dupont Teijin*, the CIT addressed Commerce's prior methodology of calculating B&H costs on a container-weight basis. The CIT stated:

> Although the court understands that Commerce commonly converts all surrogate values into a per kilogram amount for use in calculating dumping margins, its method of doing so here, based on the weight of the containers and not based on the shipment as a whole, is unreasonable and unsupported by substantial evidence. One reasonable conversion methodology appears to be to calculate a per kilogram surrogate value allocating the $210 document cost and the $169 customs clearance cost over the weight of an entire shipment.[52]

Thus, in *Dupont Teijin*, the CIT indicated that one appropriate method for calculating "document preparation" and "customs clearance and technical control" costs is to base its calculation on a weight for an entire shipment.

In *SeAH VINA*, the CAFC indicated the same. It stated:

> The Government argues that "{g}iven the mixed record of evidence showing that {SeAH's and} Indian {B&H} costs" were "sometimes charged {and paid} by weight," Commerce acted within its "discretion." . . . However, the record here is not "mixed" or "conflicting," as the Government asserts. . . . As the CIT has already explained, we understand "that Commerce commonly converts all surrogate values into a per kilogram amount for use in calculating dumping margins," however, "its method of doing so here, based on the weight of the containers" is "unsupported by substantial evidence." *Dupont Teijin*, 7 F. Supp. 3d at 1351–52; *see CS Wind*, 971 F. Supp. 2d at 1295.[53]

Therefore, we determine that our allocation of "document preparation" and "customs clearance and technical control" based on shipment weight conforms with the CAFC's decision in *SeAH VINA*.

With respect to "port and terminal handling," we disagree with the petitioner that our use of the maximum container weight to calculate a per-unit cost in the Draft Redetermination conflicts with the CAFC's analysis and remand.[54] As an initial matter, we disagree with the

[52] *See Dupont Teijin*, 7 F. Supp. 3d at 1351-52.
[53] *See SeAH VINA*, 950 F.3d at 848-49.
[54] *See* Petitioner Comments at 7-13.

petitioner that in its brief to the CAFC, "{SSV} never specifically referenced 'port and terminal handling' costs."[55] In its brief to the CAFC, SSV said "{t}he methodology proposed by SSV — which would allocate . . . terminal handling and port charges based on the maximum shipment quantity per container — is consistent with the only evidence on the record concerning the manner in which such costs are incurred in India."[56] SSV also discussed "port and terminal handling" in footnotes 83, 85, and 96 of its brief.[57] Thus, SSV did reference "port and terminal handling" in its brief to the CAFC, and proposed a method of recalculating it.

Moreover, even though the CAFC did not address "port and terminal handling" explicitly in *SeAH VINA*, it did address the underlying issue of the proper allocation methodology for B&H costs. Prior to the Draft Redetermination, Commerce calculated a per-unit cost for all categories of B&H expense, including "port and terminal handling," based on the understanding that *Doing Business* data assumed a fixed weight for purposes of calculating B&H costs such that the price and weight were dependent on one another. In *SeAH VINA*, the CAFC rejected this understanding. It stated that *Doing Business* "does not describe cost as dependent on the weight of {the} container. Accordingly, Commerce's assumption that the '*Doing Business* {Report} calculation assumed a fixed weight for purposes of calculating B&H costs' is without reasonable basis."[58] Commerce determines that this statement in the present case, based on the evidence on the record, relates to the three categories of B&H expenses here, including "port and terminal handling" costs. Thus, Commerce did not "impermissibly revisit a settled decision" by revising the calculation for "port and terminal handling," as the petitioner argues.[59]

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[55] *Id.* at 8.
[56] *See* SSV CAFC Brief at 62.
[57] *Id*. at 56, 57, and 62.
[58] *See SeAH VINA*, 950 F. 3d at 847.
[59] *See* Petitioner Comments at 11.

Furthermore, we do not agree with the petitioner that we should have calculated the per-unit costs for "port fees and terminal handling" using 10 MT as the denominator. Commerce has reexamined the record and determines that the only data available relating to container weight, apart from the 10 MT statement in the *Doing Business* report was provided in the OOCL Data.[60] Therefore, because there is evidence on the record that "port and terminal handling" costs are incurred on a container basis,[61] the relevant quantity by which to divide the cost of "port and terminal handling" costs, for purposes of calculating a per-MT cost in this case, is the maximum container weight of 21.727 MT reported on the record.

Comment 2: Calculation Error in Draft Redetermination

SSV Comments

- Commerce made an error in its SAS programming for the Draft Redetermination. Specifically, in its cost calculation for one control number (CONNUM), it did not revise the import B&H figure to reflect the B&H figure it intended to use in the Draft Redetermination.

No other interested parties commented on this issue.

Commerce Position:

We agree with SSV and we have corrected this error in the SAS programming for this final redetermination on remand.

[60] *See* OOCL Data.
[61] *Id.*

V. Final Results of Redetermination

We have implemented the change discussed above. As a result of this remand redetermination, we have calculated for SSV a weighted-average dumping margin of 38.28 percent.[62]

9/28/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[62] *See* Memorandum, "Analysis for the Final Redetermination on Remand in the Antidumping Investigation of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam; SeAH Steel VINA Corporation," dated concurrently with this redetermination.