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DATE: May 23, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration.

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty New Shipper Review: Multilayered Wood Flooring from the
People's Republic of China

SUMMARY

In response to a request from an interested party, the Department of Commerce (“Department”) is conducting a new shipper review (“NSR”) of the antidumping duty order on multilayered wood flooring (“MLWF”) from the People’s Republic of China (“PRC”). The period of review (“POR”) is May 26, 2011, through May 31, 2012. The Department has preliminarily determined that the sale has not been made below normal value (“NV”) by the company subject to this review.

BACKGROUND

On December 8, 2011, the Department published in the *Federal Register* an antidumping duty order on MLWF from the PRC.¹ On June 28, 2012, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (“Act”), and 19 CFR 351.214(b), the Department received a timely NSR request from the Power Dekor Group Co., Ltd. (“Power Dekor”). Power Dekor’s request was made in June 2012, which is the semiannual anniversary month of the *Order*. On July 11, 2012, the Department issued a supplemental questionnaire regarding Power Dekor’s request for an NSR. On July 13, 2012, Power Dekor timely submitted its response to the Department’s supplemental questionnaire. On July 25, 2012, the Department initiated this NSR for Power Dekor in order to determine whether imports into the United States of MLWF from the PRC are being sold below NV. On July 25, 2012, the Department also released U.S. Customs and Border Protection (“CBP”) data for the Harmonized Tariff Schedule of the United States (“HTSUS”) numbers included in the “Scope of the Order” section below. On July 30,

¹ See *Multilayered Wood Flooring from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 FR 76690 (December 8, 2011).



2012, the Department issued the antidumping questionnaire to Power Dekor. On July 31, 2012, the Department published the notice of initiation of an antidumping duty NSR on MLWF from the PRC.² On August 30, 2012, the Department obtained from CBP entry documentation regarding MLWF for this review from CBP. Between August 27, 2012 and March 1, 2013, we received timely questionnaire responses from Power Dekor. Additionally, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29 through October 30, 2012.³ Thus, all deadlines in this segment of the proceeding have been extended by two days. On January 17, 2013, the Department extended the deadline for the preliminary results by 120 days until May 23, 2013.⁴

SCOPE OF THE ORDER

The product covered by the order is MLWF, which is composed of an assembly of two or more layers or plies of wood veneer(s)⁵ in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. MLWF is often referred to by other terms, e.g., “engineered wood flooring” or “plywood flooring.” Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

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

² See *Multilayered Wood Flooring from the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review*, 77 FR 45336 (July 31, 2012) (“*Initiation Notice*”).

³ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy,” dated October 31, 2012.

⁴ See Memorandum from Trisha Tran, International Trade Compliance Analyst, Office 4, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Multilayered Wood Flooring from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review” (January 17, 2013).

⁵ A “veneer” is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

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

MLWF products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (e.g., circular, hexagonal). All MLWF products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the HTSUS: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

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

DISCUSSION OF THE METHODOLOGY

Bona Fide Sale Analysis

For this review, consistent with the Department’s practice, the Department investigated the *bona fide* nature of the sale made by Power Dekor during the POR. In evaluating whether or not a sale in an NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the

transaction was made on an arm's-length basis.⁶ Accordingly, the Department considers a number of factors in its *bona fide* sale analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."⁷

The Department preliminarily finds that the sale of subject merchandise made by Power Dekor was made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) the timing of the sale by itself does not indicate that the sale might not be *bona fide*; (2) record evidence indicates that the price and quantity of the sale are commercially reasonable and not atypical of normal business practices of MLWF exporters; (3) Power Dekor did not incur any extraordinary expenses arising from the transaction; (4) the goods were resold by Power Dekor's unaffiliated U.S. customer with a profit; and (5) the new shipper sale was made between Power Dekor and its unaffiliated U.S. customer at arm's length.⁸ Therefore, the Department has preliminarily found that Power Dekor's sale of subject merchandise to the United States was *bona fide* for the purposes of this NSR.

Non-Market Economy Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a nonmarket economy ("NME") country shall remain in effect until revoked by the administering authority.⁹ As such, the Department continues to treat the PRC as an NME in this proceeding. Accordingly, we calculated normal ("NV") using the factors of production ("FOP") methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.¹⁰ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.¹¹ It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.¹² Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities.¹³ The Department analyzes each entity's export independence under a test first

⁶ See, e.g., *Tianjin Tancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005).

⁷ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

⁸ See Memorandum from Trisha Tran, International Trade Compliance Analyst, Office 4 AD/CVD Operations to Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: *Bona Fide* Sale Analysis for Power Dekor Group Co., Ltd." dated concurrently with this memorandum.

⁹ See section 771(18)(C)(i) of the Act.

¹⁰ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

¹¹ See *Initiation Notice*, 77 FR at 45336.

¹² See *id.*

¹³ See *id.*

articulated in *Sparklers* and as further developed in *Silicon Carbide*.¹⁴ However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁵

Separate Rate Recipients

Wholly Chinese-Owned Company

Power Dekor reported that it is a wholly Chinese-owned company.¹⁶ According to Power Dekor’s business license, it is “a company limited (wholly owned by a legal person) privately owned.” Therefore, the Department must analyze whether this respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies.¹⁷ The evidence provided by Power Dekor supports a preliminary finding of *de jure* absence of government control based on the criteria outlined above.¹⁸

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the EPs are set by or are subject to the approval of a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.¹⁹ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates. The

¹⁴ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).

¹⁵ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

¹⁶ See Letter from Power Dekor to the Secretary of Commerce, entitled “New Shipper Review for Multilayered Wood Flooring from the People’s Republic of China: Section A Questionnaire Response of Power Dekor Group Co., Ltd.,” dated August 27, 2012 (“*Power Dekor’s Section A Response*”) at Exhibit 5.

¹⁷ See *Sparklers*, 56 FR at 20589.

¹⁸ See *Power Dekor’s Section A Response* at questions 2(d) through 2(f).

¹⁹ See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

evidence provided by Power Dekor supports a preliminary finding of *de facto* absence of government control based on the criteria outlined above.²⁰

As a result of our analysis, the Department preliminarily finds that Power Dekor established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOP. The Act further instructs that valuation of the FOP shall be based on the best available information from a surrogate ME country or countries considered to be appropriate by the Department.²¹ When valuing the FOP, the Department shall utilize, to the extent possible, the prices or costs of the FOP in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.²² Once the Department has identified the countries that are economically comparable to the PRC and identifies those countries which are significant producers, the Department will select a primary surrogate country based upon whether the data for valuing FOPs are both available and reliable. Further, the Department normally values all FOPs in a single surrogate country.²³

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand are countries comparable to the PRC in terms of economic development.²⁴ On November 6, 2012, the Department invited parties to comment on surrogate country selection and provide information regarding valuing FOPs.²⁵ On November 13, 2012, Petitioners and Power Dekor filed surrogate country comments. Power Dekor stated that the Department should choose the Philippines as the surrogate country because: (1) it is economically comparable to the PRC; (2) it is a significant producer of comparable merchandise; and (3) its data for valuing FOPs is readily available and sufficient.²⁶ Petitioners argued that all six countries, including the Philippines, are (1) economically comparable to the PRC; (2) significant producers of comparable merchandise; and (3) the data for valuing FOPs are broadly available and reliable for all six countries.²⁷ None of the parties filed rebuttal surrogate country comments. On November

²⁰ See Power Dekor's Section A Response at questions 2(a)(iii)-(v); 2(b)-(c); 2(g)-(q).

²¹ See section 773(c)(1) of the Act.

²² See section 773(c)(4) of the Act.

²³ See 19 CFR 351.408(c)(2).

²⁴ See Memorandum from Carole Showers, Director, Office of Policy, to Charles Riggle, Program Manager, Office 4, "Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China" (November 2, 2012) ("Policy Memorandum").

²⁵ See the Department's Letter to All Interested Parties, "New Shipper Review for Multilayered Wood Flooring from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information, dated November 6, 2012.

²⁶ See Letter from Power Dekor to Secretary of Commerce, entitled "New Shipper Review for Multilayered Wood Flooring from the People's Republic of China: Surrogate Country Comments of Power Dekor Group Co., Ltd.," dated November 13, 2012.

²⁷ See Letter from Petitioners to Secretary of Commerce, entitled "Multilayered Wood Flooring from China: New Shipper Review," dated November 13, 2012.

20, 2012, the Department received information to value FOPs from Petitioners and Power Dekor.²⁸ None of the parties filed rebuttal surrogate value (“SV”) comments.

Economic Comparability

As explained in our Policy Memorandum, the Department considers Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand all comparable to the PRC in terms of economic development.²⁹ Therefore, we consider all six countries as having satisfied this prong of the surrogate country selection criteria.³⁰

Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin 04.1 for guidance on defining comparable merchandise.³¹ The Policy Bulletin 04.1 states that “{t}he terms ‘comparable level of economic development,’ ‘comparable merchandise,’ and ‘significant producer’ are not defined in the statute.” The Policy Bulletin 04.1 further states that “{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”³² Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.³³ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.³⁴ “In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this, depends on the subject merchandise.”³⁵ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis. However, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products,

²⁸ See Letter from Petitioners to Secretary of Commerce, “Multilayered Wood Flooring from China: New Shipper Review,” dated November 20, 2012 (“Petitioners’ Surrogate Value Comments”); see also Letter from Power Dekor to Secretary of Commerce, “New Shipper Review for Multilayered Wood Flooring from the People’s Republic of China: Surrogate Value Comments of Power Dekor Group Co., Ltd.” (“Power Dekor’s Surrogate Value Comments”).

²⁹ See Policy Memorandum.

³⁰ See section 773(c)(4)(A) of the Act.

³¹ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin 04.1”), available at <http://ia.ita.doc.gov/policy/index.html>.

³² See *id.*

³³ Policy Bulletin 04.1 also states that “{i}f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” See *id.*, at n. 6.

³⁴ See *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997), and accompanying Issues and Decision Memorandum at Comment 1 (“to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute”).

³⁵ See Policy Bulletin 04.1.

comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.³⁶

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.³⁷ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”³⁸ it does not preclude reliance on additional or alternative metrics. In this case, we examined export data published by the Global Trade Atlas (“GTA”) to determine which countries included on the Surrogate Country List were producers of comparable merchandise. More specifically, we obtained export data from the GTA during the POR for Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand for the six-digit harmonized tariff schedule (“HTS”) number listed in the description of the scope of this proceeding, *i.e.*, 441231,³⁹ 441232,⁴⁰ 441239,⁴¹ 441294,⁴² 441299,⁴³ 441871,⁴⁴ and 441872.⁴⁵ The Department selected export data under these HTS sub-categories because it found that merchandise that falls under these HTS sub-categories are sufficiently comparable to MLWF.⁴⁶ The following export data show that all six potential surrogate countries were exporters of products under the relevant HTS categories:

Country	Export Quantity (KG)	Export Quantity (M3)
Colombia	1,893,900	
Costa Rica	54,213	
Indonesia	2,155,725,860	
The Philippines	1,428,083	
South Africa	3,462,332	226,059
Thailand	3,319,731	2,677,392

Therefore, because we find that all six countries are at a level of economic development comparable to that of the PRC and are significant producers of comparable merchandise,⁴⁷ we based our selection of a surrogate country on the availability of data for valuing FOPs.

Data Availability

³⁶ See *id.*

³⁷ See section 773(c)(1) of the Act; *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

³⁸ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

³⁹ HTS 441231 is described as “Plywood Consisting Solely Of Sheets Of Wood (Exc Bamboo), Each Ply Not Exceeding 6 Mm In Thickness, Trop Wd Spec In Subhead Nt 1.”

⁴⁰ HTS 441232 is described as “Plywood Consisting Solely Of Sheets Of Wood (Exc Bamboo), Each Ply Not Exceeding 6 Mm In Thickness, Nonconiferous, Nesoi.”

⁴¹ HTS 441239 is described as “Plywood Consisting Solely Of Sheets Of Wood (Exc Bamboo), Each Ply Not Exceeding 6 Mm In Thickness, Coniferous Wd, Nesoi.”

⁴² HTS 441294 is described as “Blockboard, Laminboard And Battenboard, Other Than Of Bamboo.”

⁴³ HTS 441299 is described as “Plywood, Veneered Panels And Similar Laminated Wood, Nesoi.”

⁴⁴ HTS 441871 is described as “Assembled Flooring Panels, Of Wood, For Mosaic Floors.”

⁴⁵ HTS 441872 is described as “Assembled Flooring Panels, Of Wood, Multilayer, Nesoi.”

⁴⁶ See, e.g., *Multilayered Wood Flooring From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 30656 (May 26, 2011), unchanged in *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (“Wood Flooring”).

⁴⁷ See Policy Bulletin 04.1.

When the Department finds that there is more than one country that is at a level of economic development comparable to that of the NME country and is a significant producer of comparable merchandise, the Department will consider the availability of the SV data. This practice is reflected in Policy Bulletin 04.1, which states:

{I}f more than one country has survived the selection process to this point, the country with the best factors data is selected as the surrogate country. Even if no issues arise regarding economic comparability and significant production, data quality is a critical consideration affecting surrogate country selection. 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. Limited data availability sometimes is the reason why the team will “go off” the OP list in search of a viable primary surrogate country.

In assessing data and data sources, it is the Department’s stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.

Further, it is the Department’s preference, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.⁴⁸

In accordance with 19 CFR 351.408(c)(2), the Department normally will value all FOPs using a single surrogate country, where specific, reliable, contemporaneous, and publicly available data exist. Unlike the other five countries which lack any financial statements on the record, there are financial statements from seven Philippine producers to calculate surrogate financial ratios. We determined that all seven are useable.⁴⁹ As such, selecting the Philippines is consistent with our regulatory preference to value all FOP in a single surrogate country because data for the Philippines are readily available and do not require supplementation, while data from all five other countries are incomplete because they lack financial statements on the record.

Additionally, the record indicates that the Philippines provides the best opportunity to use quality, publicly available data to value FOP. Relying upon the Philippines as the primary surrogate country would allow the Department to use contemporaneous publicly available GTA import data to value each and every direct material, packing, and energy input for the POR months. Philippine GTA import data are publicly-available, contemporaneous with the period of review, tax and duty free, and reflect a broad market average.⁵⁰

⁴⁸ See, e.g., *Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) and accompanying Issues and Decision Memorandum at Comment 10.

⁴⁹ See Financial Statements section below.

⁵⁰ See Memorandum from Trisha Tran, International Trade Compliance Analyst, Office 4 AD/CVD Operations to Charles Riggle, Program Manager, Office 4, AD/CVD Operations, entitled “Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People’s Republic of China: Surrogate Value Memorandum for

Accordingly, based on record evidence, the Department has preliminarily determined to select the Philippines as the surrogate country on the basis that: (1) it is at a comparable level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from the Philippines that the Department can use to value all of Power Dekor's FOPs.⁵¹ In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value FOPs until 20 days after the date of publication of the preliminary results.⁵²

Date of Sale

Consistent with our regulation, Power Dekor reported the invoice date as the date of sale.⁵³ However, the Department has a practice of using shipment date as the date of sale when shipment date occurs prior to invoice date because material terms of sale such as quantity are fixed at the time of shipment.⁵⁴ As a result, we find that where merchandise is shipped prior to invoice date, the date of shipment better reflects the date on which the material terms of sale were finalized.⁵⁵ Therefore, because Power Dekor's sale was shipped prior to the invoice date, and consistent with the Department's practice, we selected shipment date as the date of sale.

the Preliminary Results of Power Dekor Group Co., Ltd." ("Power Dekor's Preliminary Results Surrogate Value Memo") dated concurrently with this memorandum.

⁵¹ See *id.*

⁵² In accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

⁵³ See Letter from Power Dekor to the Secretary of Commerce, entitled "New Shipper Review for Multilayered Wood Flooring from the People's Republic of China: Supplemental Sections A, C, and D Questionnaire Response of Power Dekor Group Co., Ltd., dated November 8, 2012 ("Power Dekor's Supplemental Sections A, C, and D Response") at 17.

⁵⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico*, 61 FR 56608, 56611 (November 1, 1996) ("We based date of sale on shipment date to avoid the potential for distortion of cost and price comparisons that occur when there is a significant lag time between date of shipment and date of invoice within the same market and/or between the two markets."). See also *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review*, 63 FR 13217, 13226 (March 18, 1998).

⁵⁵ See, e.g., *Wood Flooring*.

Fair Value Comparisons

To determine whether the sale of MLWF to the United States by Power Dekor was made at less than NV, we compared the export price (“EP”) to NV, as described in the “Export Price” and “Normal Value” sections below.⁵⁶

Differential Pricing Analysis

The Department’s differential pricing analysis requires a finding of a pattern of EPs (or constructed EPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin.

The differential pricing analysis evaluates all purchasers, regions, and time periods to determine whether a pattern of price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by Power Dekor. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or constructed EP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. In the instant review, because there is only one sale, the question as to whether a pattern of prices that differ significantly exists is moot. Accordingly, the Department is not applying the differential pricing analysis and is calculating Power Dekor’s dumping margin using its standard method by comparing the weighted-average NV to the weighted-average EP.

⁵⁶ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

U.S. Price

In accordance with section 772(a) of the Act, EP 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, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for the U.S. sale of Power Dekor because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation, and because constructed EP was not otherwise warranted.

We based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation and domestic brokerage and handling.⁵⁷ Power Dekor did not report or claim any other adjustments to EP.⁵⁸

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in a NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. This methodology ensures that the Department's calculations are as accurate as possible.⁵⁹

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOP, but when a producer sources an input from an ME and pays for it in an ME currency, the Department may value the FOP using the actual price paid for the input.⁶⁰ In accordance with our practice outlined in *Antidumping Methodologies: Market Economy Inputs*,⁶¹ when at least 33 percent of an input is sourced from ME suppliers and purchased in an ME currency, the Department will use actual ME purchase

⁵⁷ See Letter from Power Dekor to the Secretary of Commerce, entitled "New Shipper Review for Multilayered Wood Flooring from the People's Republic of China: Section C Questionnaire Response of Power Dekor Group Co., Ltd.," dated September 13, 2012 at 35-37.

⁵⁸ See *id.* at 35-39.

⁵⁹ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

⁶⁰ See 19 CFR 351.408(c)(1); see also *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382-1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

⁶¹ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-19 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

prices to value these inputs.⁶² Power Dekor reported raw material purchases sourced from and produced by ME suppliers and paid for in an ME currency during the POR for certain inputs.⁶³ Additionally, at least 33 percent of these certain inputs are sourced from ME suppliers and purchased in ME currency.⁶⁴ Power Dekor provided the supporting country of origin certificates associated with these inputs.⁶⁵ Therefore, the Department has valued these inputs using the ME purchase prices reported by Power Dekor, where appropriate.

Section 773(c) of the Act provides that the Department will value the FOP in NME cases using the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing the FOP, the Department utilize, to the extent possible, the prices or costs of FOP in one or more ME countries that are: (1) at a comparable level of economic development, and (2) significant producers of comparable merchandise.⁶⁶ As stated above, the Department preliminarily determined to select the Philippines as the surrogate country.

We calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOP include but are not limited to: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. Power Dekor reported that all of the merchandise under consideration that it sold to the United States during the POR was produced by Guangzhou Homebon Timber Manufacturing Co., Ltd (“Homebon”), an affiliated supplier. The Department used the FOP reported by Homebon for materials, energy, labor, and packing.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP reported by Homebon for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as

⁶² For a detailed description of all actual values used for ME inputs, see Memorandum from Trisha Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Charles Riggle, Program Manager, AD/CVD Operations, Office 4, entitled “Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People’s Republic of China: Analysis Memorandum for the Preliminary Results of Power Dekor” dated concurrently with this memorandum.

⁶³ See Letter from Power Dekor to the Secretary of Commerce “New Shipper Review for Multilayered Wood Flooring from the People’s Republic of China: Section D Questionnaire Response of Power Dekor Group Co., Ltd.,” dated September 13, 2012 (“Power Dekor’s Section D Response”) at D-11, Exhibit D-4, D-5, and D-6; see also Power Dekor’s Supplemental Sections A, C, and D Response at 45 and Exhibit SACD-42; see also Letter from Power Dekor to the Secretary of Commerce, entitled “New Shipper Review for Multilayered Wood Flooring from the People’s Republic of China: Second Section D Questionnaire Response of Power Dekor Group Co., Ltd.,” dated December 20, 2012; see also Letter from Power Dekor to the Secretary of Commerce, entitled “New Shipper Review for Multilayered Wood Flooring from the People’s Republic of China: Third Section D Questionnaire Response of Power Dekor Group Co., Ltd.,” dated January 3, 2013; see also Letter from Power Dekor to the Secretary of Commerce, entitled “New Shipper Review for Multilayered Wood Flooring from the People’s Republic of China: Fourth Section D Questionnaire Response of Power Dekor Group Co., Ltd.,” dated January 3, 2013.

⁶⁴ See *id.*

⁶⁵ See Power Dekor’s Section D Response at D-5.

⁶⁶ See section 773(c)(4) of the Act.

appropriate. Specifically, the Department added to the Philippine import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). A detailed description of all SVs used to value Homebon's reported FOP may be found in Power Dekor's Preliminary Results Surrogate Value Memo.⁶⁷

The Department calculated SVs for the majority of reported FOP purchased from NME sources using the contemporaneous, weighted-average unit import value as published by the Philippine National Statistics Office, the official source and primary statistical agency of the Philippine government, published by GTA.⁶⁸ More specifically, the Department used GTA Philippine Import Statistics to calculate SVs for raw materials (e.g., paint, adhesive, flour), packing materials (e.g., carton, wooden pallets, wrapping film). GTA Philippine Import Statistics were reported in United States Dollars ("USD") and are contemporaneous with the POR. In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.⁶⁹

Furthermore, with regard to Philippine import-based SVs, in accordance with the Omnibus Trade and Competitiveness Act of 1988 and longstanding agency practice, the Department disregarded prices that it has reason to believe or suspect may be subsidized.⁷⁰ The Department previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we determined that these countries maintain broadly available, non-industry specific, export subsidies.⁷¹ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it has reason to believe or suspect that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies and that we should therefore disregard any data from these countries contained in the Philippine import statistics used to calculate SVs. Consistent with our practice, the Department disregarded prices from

⁶⁷ See Power Dekor's Preliminary Results Surrogate Value Memo.

⁶⁸ *Id.*

⁶⁹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁷⁰ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("Omnibus Trade and Competitiveness Act of 1988") at 590, reprinted in 1988 U.S.C.A.N. 1547, 1623-24.

⁷¹ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4-5; see also *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; see also *Final Affirmative Countervailing Duty Determination: Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

NME countries.⁷² Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, since the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁷³ We are also guided by the statute’s legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.⁷⁴ Rather, this legislative history states that the Department should base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Philippine import-based SVs.

To calculate the labor input, we based our calculation on the methodology expressed by the Department in *Labor Methodologies*,⁷⁵ which recommends using single-country labor cost and compensation data from Chapter 6A of the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).⁷⁶ Under Chapter 6A of the ILO data, the labor data cover all paid manufacturing employees, wage earners and salaried employees, of both sexes. The Philippine ILO labor data include annual costs categorized as “labor cost” reported on a per-hour basis for 2002 and annual costs categorized as “compensation of employees” on a per-day and a per-month basis for 2008.⁷⁷ While it is the Department’s preference to use the data categorized as “labor cost,” over “compensation of employees,” we determined that the best data available to use in this review are the 2008 “compensation for employees” hourly data because they are closer to the POR than are the 2002 “labor cost” data.⁷⁸ Therefore, we relied on the most recent (2008) Philippine labor cost data categorized as “compensation of employees,” that were reported on a daily basis to calculate a single labor rate.⁷⁹

We valued truck freight expenses using average truck rates from the Confederation of Truckers Association of the Philippines, Inc. (“CTAP”) for 92 destinations within the Philippines and the driving distances to these 92 destinations.⁸⁰ The CTAP source is the best available information to value truck freight because it is contemporaneous with the POR, represents a broad market average of multiple destinations, specific to the input being valued, and contains numerous data points by which the Department was able to calculate the SV for truck freight. For those inputs where Power Dekor reported a unit of measure of M3, we converted the kg/km SV to a M3/km

⁷²See *Sodium Hexametaphosphate From the People's Republic of China: Preliminary Results of Second Antidumping Duty Administrative Review*, 77 FR 17013 (March 23, 2012), unchanged in *Sodium Hexametaphosphate From the People's Republic of China: Final Results of Second Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012).

⁷³ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008).

⁷⁴ See Omnibus Trade and Competitiveness Act of 1988, at 590

⁷⁵ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

⁷⁶ See <http://laborsta.ilo.org/applv8/data/c6e.html>.

⁷⁷ See *id.*

⁷⁸ See Power Dekor’s Preliminary Results Surrogate Value Memo.

⁷⁹ See *id.*

⁸⁰ See *id.*

basis in Power Dekor's margin program using the appropriate wood density information Power Dekor placed on the record.⁸¹

We valued brokerage and handling using the World Bank's 2012 *Doing Business in the Philippines*. This SV source contains contemporaneous data for brokerage and handling. The brokerage and handling related costs in the World Bank report are for 10 metric tons, which is the weight of the shipment for which participants in the *Doing Business in the Philippines* survey reported a brokerage and handling cost. Because the data used in the report are current as of June 1, 2011, we did not inflate this SV.⁸²

We valued electricity using Philippine data from Camarines Sur. This electricity rate pertains to industrial consumption. The end of the transition of the electricity rates for Naga City and Igira City are January 2012. This indicates that the rates are contemporaneous with the POR. Therefore, we are using the rates without adjusting for inflation or deflation.⁸³

The Department valued water using price data based on water tariff sources from the following: Mayniland, Manila Water, and LWUA. For Manila Water, we used data for new rates effective from January 1, 2012, which were listed under "New Rate." Similarly, for Mayniland, we obtained data for new rates effective from January 1, 2012, which were listed under "New Rate." This source provides water rates for industrial and commercial users, which are identified as Business Group II, that are contemporaneous with the POR of this review. For LWUA data, we used an average of data from January 1, 2011, July 1, 2011, January 1, 2012, and July 1, 2012. For Manila Water and Mayniland, we used an average of the Business Group II and included the itemized Environmental and Sewerage charges, but did not include the Maintenance Service Charge because the record does not contain the information necessary to perform this calculation (*i.e.*, the size of Power Dekor's water meter). We then averaged the prices from all three sources to calculate one SV.⁸⁴

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, general and administrative expenses ("SG&A"), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. As stated above in the "Surrogate Country" section of this memorandum, we determined to use the Philippines as the primary surrogate country. Therefore, to value factory overhead, SG&A and profit, the record contained the audited financial statements for the year ending December 2011 of seven Philippine financial statements. Petitioners submitted five financial statements: (1) Smart Plywood Industries Inc.; (2) Tagum PPM Wood Veneer, Inc.; (3) Novawood Forest Industries Corporation; (4) Philippine Softwood Products, Inc.; and (5) Richmond Plywood Corporation.⁸⁵ Power Dekor submitted two financial statements, (1) Winlex Marketing Corporation and (2) Davao Panels Enterprises.⁸⁶ All seven financial statements are publicly available and contemporaneous. Additionally, all seven financial statements are from producers of comparable

⁸¹ See *id.*

⁸² See *id.*

⁸³ See *id.*

⁸⁴ See *id.*

⁸⁵ See Petitioners' Surrogate Value Comments at Exhibit 2-6.

⁸⁶ See Power Dekor's Surrogate Value Comments at Exhibits 2-3.

merchandise because they are producers of plywood.⁸⁷ We carefully examined the financial statements and determined that all seven financial statements are useable. Thus, the Department valued factory overhead, SG&A and profit using all seven financial statements.⁸⁸ The Department may consider other publicly available financial statements for the final results, as appropriate.

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* Power Dekor's Preliminary Results Surrogate Value Memo.

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rate in effect on the date of the U.S. sale as certified by the Federal Reserve Bank.

Section 777A(f) of the Act

In applying section 777A(f) of the Act, the Department has examined: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.⁸⁹ For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.⁹⁰ In conducting this analysis, the Department has not concluded that concurrent application of NME antidumping and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute. As a result of our analysis explained further below, the Department is preliminarily not making adjustments pursuant to section 777A(f) of the Act to the antidumping duty cash deposit rate found for Power Dekor in this NSR.

Because the above-mentioned analysis under section 777A(f) of the Act is still a relatively new practice,⁹¹ the Department is continuing to refine its practice in applying the new law. These

⁸⁷ See Petitioners' Surrogate Value Comments; *see also* Power Dekor's Surrogate Value Comments.

⁸⁸ See *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at Comment 1a.

⁸⁹ See section 777A(f)(1)(A)-(C) of the Act.

⁹⁰ See section 777A(f)(1)-(2) of the Act.

⁹¹ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683, 52686 (August 30, 2012);

preliminary results are based on information on the administrative record provided by Power Dekor in this NSR.⁹² Power Dekor reported that it is not the producer of any merchandise and, thus, did not receive benefits under any subsidy programs affecting its cost of manufacture.⁹³ Furthermore, though Power Dekor claimed that, during the POR, Homebon (*i.e.*, the producer of the subject merchandise under review) did benefit from a subsidy program,⁹⁴ neither Power Dekor nor Homebon provided evidence to substantiate this claim. As such, there is no record evidence that a countervailable subsidy has been provided with respect to a class or kind of merchandise. Additionally, with respect to the second requirement of the analysis under section 777A(f), we find that Power Dekor did not demonstrate that the “Two Free, Three Half Program” reduced the average price of imports because Power Dekor also specified that the “Two Free, Three Half Program” is not a program affecting Homebon’s cost of manufacture.⁹⁵ The Department’s questionnaire also indicated that the relevant time period must include the period of review *but may extend beyond* the period of review as necessary to answer the questions in full.⁹⁶ Power Dekor provided no such evidence of the cost-linked price changes with respect to the “Two Free, Three Half Program.”⁹⁷ Accordingly, we find that Power Dekor did not meet the second requirement under the analysis; therefore, the Department is not applying an adjustment under section 777A(f) of the Act in these preliminary results.⁹⁸ The Department continues to develop and refine its methodological approach to addressing domestic subsidy pass-through rates and may issue follow-up requests for information from the interested parties after the publication of these preliminary results to supplement and clarify certain record information for purposes of the final results.

see also Drawn Stainless Steel Sinks From the People’s Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013) and accompanying Issues and Decision Memorandum at Issue 1.

⁹² See Letter from Power Dekor to the Secretary of Commerce, entitled “Double Remedies Supplemental Questionnaire Responses in New Shipper Review for Multilayered Wood Flooring from the People’s Republic of China” dated March 1, 2013.

⁹³ See *id.* at 10-13.

⁹⁴ Power Dekor reported that Homebon benefitted from the “Two Free, Three Half Program.”

⁹⁵ See *id.*

⁹⁶ See *id.* at 9.

⁹⁷ See *id.* at 10-13.

⁹⁸ The Department did not examine the third requirement because the third requirement is moot since Power Dekor did not provide evidence to satisfy the first and second requirement.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

23 MAY 2013
(Date)