



C-570-971
Administrative Review
POR: 1/1/2013 – 12/31/2013
Public Document
E&C/OI: MK

May 13, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Final Results and Partial Rescission of
of Countervailing Duty Administrative Review: Multilayered
Wood Flooring from the People's Republic of China; 2013

I. SUMMARY

The Department of Commerce (the Department) has conducted an administrative review of the countervailing duty (CVD) order on multilayered wood flooring (wood flooring) from the People's Republic of China (PRC).¹ The period of review (POR) is January 1, 2013, through December 31, 2013. We find that the mandatory respondents Dalian Penghong Floor Products Co., Ltd. (Penghong) and The Lizhong Wood Industry Limited Company of Shanghai (Lizhong) (also known as "Shanghai Lizhong Wood Products Co., Ltd.") received countervailable subsidies during the POR. We are using the mandatory respondents' CVD rates to calculate the rate applied to the other firms subject to this review. The Department is rescinding the review for five companies that certified that they had no shipments of subject merchandise to the United States during the POR and for which we received no evidence from CBP contradicting these claims. Two other companies that initially certified making no shipments of subject merchandise during the POR subsequently withdrew their certifications and, therefore, continue to be subject to this administrative review.

II. BACKGROUND

On January 11, 2016, the Department published the *Preliminary Results* of this administrative review.² In the *Preliminary Results*, we stated our intent to rescind the review for the seven

¹ See *Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order*, 76 FR 76693 (December 8, 2011) (*Order*); see also *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012) (*Amended Order*).

² See *Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2013*, 81 FR 1169 (January 11, 2016).

companies that timely certified that they made no shipments of subject merchandise during the POR³, provided we did not receive information from Customs and Border Protection (CBP) which contradicted these companies' claims of no sales, shipments, or entries of subject merchandise to the United States during the POR. On December 28, 2015, the Department requested information from CBP to determine whether any of the seven companies exported subject merchandise to the United States during the POR.

CBP notified us that Linyi Bonn Flooring Manufacturing Co., Ltd. (Linyi Bonn) and Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd. (Changbai Mountain) made shipments to the United States. On January 21, 2016, the Department sent a letter to CBP asking for complete U.S. entry documentation for these shipments⁴ and received a response on February 22, 2016.⁵ On February 26, 2016, we received a letter from Linyi Bonn withdrawing its no shipment certification for this review.⁶ On February 26, 2016, the Department sent a supplemental questionnaire letter to Changbai Mountain asking for further information regarding its entries of subject merchandise during the POR. On March 11, 2016, we received a response from Changbai Mountain withdrawing its certification of no shipments.⁷

We issued an additional supplemental questionnaire to Lizhong on January 12, 2016, and received a response on January 22, 2016.⁸ On February 17, 2016, we received timely filed case briefs from Fine Furniture (Shanghai) Limited (Fine Furniture) and Penghong.⁹ On February 17, 2016, we received a timely request for a public hearing from Penghong, Dunhua City Dexin Wood Industry Co., Ltd., Dun Hua City Jisen Wood Industry Co., Ltd., Changzhou Hawd Flooring Co. Ltd., Karly Wood Product Limited, Yingyi-Nature (Kunshan) Wood Industry Co. Ltd., Dalian Huilong Wooden Products Co., Ltd., Dunhua City Hongyuan Wood Industry Co. Ltd., Jiaying Hengtong Wood Co., Ltd., Xiamen Yung De Ornament Co., Ltd., and Zhejiang

³ See letter from Zhejiang Shuimojiangnan New Material Technology Co., Ltd., "Multilayered Wood Flooring from the People's Republic of China-No Sales Certification," dated April 3, 2015; see also letter from Tongxiang Jisheng Import and Export Co., Ltd., Jiangsu Guyu International Trading Co, Ltd., Jiangsu Mingle Flooring Co., Ltd., Shenyang Senwang Wooden Industry Co., Ltd., Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., and Linyi Bonn Flooring Manufacturing Co., Ltd., "Multilayered Wood Flooring from the People's Republic of China: Submission of No Shipment Certifications," dated April 6, 2015.

⁴ See Memorandum to Alexander Amdur, Director, AD/CVD/Revenue Policy & Programs, U.S. Customs and Border Protection, from James Maeder, Senior Office Director, Office I, Enforcement and Compliance, re: Request for U.S. Entry Documents - Multilayered Wood Flooring from the People's Republic of China-- Customs Case No. C-570-971.

⁵ See Memorandum from Wendy Frankel, Director, Customs Liaison Unit, to James Maeder, Office 1, re: "Request for U.S. Entry Documents - Multilayered Wood Flooring from the People's Republic of China (C570-971) dated February 22, 2016.

⁶ See letter from Linyi Bonn Flooring Manufacturing Co., Ltd., re: "Correction of Information and Withdrawal of No Shipment Statement" dated February 26, 2016.

⁷ See letter from Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., re: "Multilayered Wood Flooring from The People's Republic of China: Supplemental Questionnaire Response" dated March 11, 2016.

⁸ See letter from Lizhong re: "Multilayered Wood Flooring from the People's Republic of China: Lizhong's Response to the Third Supplemental Countervailing Duty Questionnaire," (January 22, 2016) (L3SQR).

⁹ See letter from Fine Furniture, re: "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Case Brief" dated February 17, 2016; see also letter from Penghong, re: "Multilayered Wood Flooring from the People's Republic of China- Dalian Penghong Case Brief" dated February 17, 2016.

Shuimojiangnan New Material Technology Co., Ltd.¹⁰ On March 1, 2016, these companies withdrew their hearing request.¹¹

Between March 25, 2016, and March 30, 2016, the Department issued letters to Dunhua City Dexin Wood Industry Co., Ltd., Huzhou Fuma Wood Co., Ltd., Jiafeng Wood (Suzhou) Co., Ltd., Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., Jiashan HuiJiaLe Decoration Material Co., Ltd., Mudanjiang Bosen Wood Industry Co., Ltd., Shanghai New Sihe Wood Co., Ltd., Shanghai Shenlin Corporation, Zhejiang Anji Xinfeng Bamboo and Wood Co., Ltd., and Zhejiang Dadongwu GreenHome Wood Co., Ltd., asking for the correct spelling of their company names as there were inconsistencies in the record and/or between present and prior reviews. We received responses on March 31, 2016, through April 12, 2016.¹² We have corrected the names of the companies in the *Final Results* and will ensure our instructions to CBP contain accurate company names.

Comment 1: Whether the Department Should Include the Name of Fine Furniture’s Affiliate, Double F Limited (Double F), in our U.S. Customs and Border Protection Instructions

Comment 2: Whether Penghong’s Electricity Rates Were Calculated Incorrectly

¹⁰ See letter from Penghong, Dunhua City Dexin Wood Industry Co., Ltd., Dun Hua City Jisen Wood Industry Co., Ltd., Changzhou Hafd Flooring Co. Ltd., Karly Wood Product Limited, Yingyi-Nature (Kunshan) Wood Industry Co. Ltd., Dalian Huilong Wooden Products Co., Ltd., Dunhua City Hongyuan Wood Industry Co. Ltd., Jiaying Hengtong Wood Co., Ltd., Xiamen Yung De Ornament Co., Ltd., and Zhejiang Shuimojiangnan New Material Technology Co., Ltd., re: “Multilayered Wood Flooring from the People’s Republic of China Request for Hearing” dated February 17, 2016.

¹¹ See letter from Penghong, Dunhua City Dexin Wood Industry Co., Ltd., Dun Hua City Jisen Wood Industry Co., Ltd., Changzhou Hafd Flooring Co. Ltd., Karly Wood Product Limited, Yingyi-Nature (Kunshan) Wood Industry Co. Ltd., Dalian Huilong Wooden Products Co., Ltd., Dunhua City Hongyuan Wood Industry Co. Ltd., Jiaying Hengtong Wood Co., Ltd., Xiamen Yung De Ornament Co., Ltd., and Zhejiang Shuimojiangnan New Material Technology Co., Ltd., re: “Multilayered Wood Flooring from the People’s Republic of China – Withdrawal of Hearing Request” dated March 1, 2016.

¹² See letter from Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., re: “Multilayered Wood Flooring from the People’s Republic of China: Clarification of Company Name” dated March 31, 2016; see also letter from Jiashan HuiJiaLe Decoration Material Co., Ltd., re: Multilayered Wood Flooring from the People’s Republic of China: Clarification of Company Name” dated March 31, 2016; see also letter from Dunhua City Dexin Wood Industry Co., Ltd. re: Multilayered Wood Flooring from the People’s Republic of China Name Clarification”, dated April 1, 2016; see also letter from Shanghai New Sihe Wood Co Ltd. and Shanghai Shenlin Corporation, re: “Response to Department “Company ID Request: Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People’s Republic of China”, dated April 7, 2016; see also letter from Sino-Maple (Jiangsu) Co, Ltd, re: “Response to Department “Company ID Request”: Administrative Review of the Countervailing Duty Order on Multilayered wood Flooring from the People’s Republic of China”, dated April 12, 2016; see also letter from Zhejiang Dadongwu GreenHome Wood Co., Ltd., re: “Multilayered Wood Flooring from the People’s Republic of China Clarification of Company Name”, dated April 12, 2016; see also letter from Sino-Maple (Jiangsu) Co., Ltd., re: “Response to Department “Company ID Request”: Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People’s Republic of China”, dated April 12, 2016; see also letter from Mudanjiang Bosen Wood Industry Co., Ltd., re: “Multilayered Wood Flooring from the People’s Republic of China; Clarification of Company Name”, dated April 19, 2016.

III. CHANGES SINCE THE PRELIMINARY RESULTS

Following the *Preliminary Results*, we requested that Lizhong report the value of its U.S. exports of subject merchandise. Lizhong provided this information and we have used it in these final results, as discussed in the final calculation memorandum for Lizhong.¹³

The Department also corrected the benchmark used in calculating one of Lizhong's electricity subsidy rates. *See* Lizhong Final Calculation Memorandum.

Finally, we corrected an error in our calculation of Penghong's electricity benefit that arose from an error in the translation of the electricity sales schedule of Zhejiang grid. In translating the schedule into English, it appears that the two column headings, "maximum demand" and "transformer capacity" were transposed, resulting in the Department using an incorrect rate for transformer capacity. *See* the final calculation memorandum for Penghong.¹⁴ The revised countervailable subsidy rates are published in the accompanying Federal Register notice.

IV. SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)¹⁵ in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring 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 multilayered wood flooring 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. Multilayered wood flooring 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 multilayered wood flooring 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 multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is

¹³ *See* Memorandum from Mary Kolberg, International Trade Compliance Analyst, to the File, re: "Final Results Calculation Memorandum for The Lizhong Wood Industry Limited Company of Shanghai (Lizhong) (also known as, "Shanghai Lizhong Wood Products Co., Ltd.") and Linyi Youyou Wood Co., Ltd. (Youyou) (collectively, Lizhong Companies)," dated concurrently with this memorandum (Lizhong Final Calculation Memorandum).

¹⁴ *See* Memorandum from Mary Kolberg, International Trade Compliance Analyst, to the File, re: "Final Results Calculation Memorandum for Dalian Penghong Floor Products Co., Ltd. (Penghong)," dated concurrently with this memorandum (Penghong Final Calculation Memorandum).

¹⁵ 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.

manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring 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.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring 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 Harmonized Tariff Schedule of the United States (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; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 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; 4412.99.5710; 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.

V. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

The Department received timely filed no-shipment certifications from Zhejiang Shuimojiangnan New Material Technology Co., Ltd.,¹⁶ Tongxiang Jisheng Import and Export Co., Ltd., Jiangu

¹⁶ See letter from Shuimojiangnan New Material Technology Co., Ltd., re: “Multilayered Wood Flooring from the People’s Republic of China- No Sales Certification” dated April 3, 2015.

Guyu International Trading Co, Ltd., Jiangsu Mingle Flooring Co., Ltd., Shenyang Senwang Wooden Industry Co., Ltd., Changbai Mountain, and Linyi Bonn.¹⁷ We submitted no-shipment inquiries to U.S. Customs and Border Protection (CBP) for these companies on December 28, 2015. We received data from CBP which contradicted the no shipment certifications filed by Changbai Mountain and Linyi Bonn, and we subsequently requested CBP entry documentation for these companies' entries. We received entry documentation on February 22, 2016.

On February 26, 2016, Linyi Bonn withdrew its no shipment certification for this review.¹⁸ On February 26, 2016, the Department sent a supplemental questionnaire to Changbai Mountain asking for further information regarding their entries of subject merchandise during the POR. On March 11, 2016, Changbai Mountain withdrew its certification of no shipments.¹⁹ Thus Changbai Mountain and Linyi Bonn remain subject to this administrative review. Pursuant to 19 CFR 351.213(d)(3), we are now rescinding the administrative review of the five companies that filed no-shipment certifications and for which we received no contradictory information from CBP: Zhejiang Shuimojiangnan New Material Technology Co., Ltd., Tongxiang Jisheng Import and Export Co., Ltd., Jiangsu Guyu International Trading Co, Ltd., Jiangsu Mingle Flooring Co., Ltd., and Shenyang Senwang Wooden Industry Co., Ltd.

VI. ANALYSIS OF COMMENTS

Comment 1: Whether the Department Should Include the Name of Fine Furniture's Affiliate, Double F Limited (Double F), in its Instructions to Customs and Border Protection

Fine Furniture's Comments:

Fine Furniture requests that the Department include the name of its affiliate, Double F Limited, in the cash deposit and liquidation instructions issued to CBP, so that both companies receive the same cash deposit and liquidation rate. Fine Furniture claims that section 751(a)(2)(C) of the Act requires that the Department's determination in an administrative review be the basis for the assessment of countervailing duties. Fine Furniture contends that the Department has recognized that Fine Furniture and Double F are related in prior proceedings relating to the antidumping and countervailing duty orders on multilayered wood flooring from the People's Republic of China, and, therefore, should add Double F to the instructions issued to CBP to properly implement the final results of this administrative review and avoid confusion at the ports.²⁰

¹⁷ See letter from Tongxiang Jisheng Import and Export Co., Ltd., Jiangsu Guyu International Trading Co, Ltd., Jiangsu Mingle Flooring Co., Ltd., Shenyang Senwang Wooden Industry Co., Ltd., Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., and Linyi Bonn Flooring Manufacturing Co., Ltd., re: "*Multilayered Wood Flooring from the People's Republic of China: Submission of No Shipment Certifications*" dated April 6, 2015.

¹⁸ See letter from Linyi Bonn Flooring Manufacturing Co., Ltd., re: "Correction of Information and Withdrawal of No Shipment Statement" dated February 26, 2016.

¹⁹ See letter from Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., re: "Multilayered Wood Flooring from The People's Republic of China: Supplemental Questionnaire Response" dated March 11, 2016.

²⁰ See letter from Fine Furniture, re: "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Case Brief," dated February 17, 2016 at 1 (Fine Furniture's Case Brief).

Fine Furniture notes that, in the first antidumping duty administrative review, the Department found that “[g]iven the affiliation between Fine Furniture and Double F, and the extent to which both companies have intertwined operations with respect to the sales of the merchandise under consideration, the Department determined that Fine Furniture and Double F are a single entity. . . . Accordingly, in the final results of this administrative review, the Department’s cash deposit and liquidation instructions to be issued to CBP will reflect the names of both Fine Furniture and Double F.”²¹ Fine Furniture argues that because the Department found Fine Furniture and Double F to be affiliated and “intertwined” in the antidumping duty proceeding, the companies must be similarly “intertwined” for the purposes of the countervailing duty proceeding. Therefore, the Department should identify Double F in addition to Fine Furniture on its instructions to CBP.²²

Fine Furniture alleges that Double F is listed on all import documentation submitted to CBP for shipments of subject merchandise, but only one rate was shown in the 2012 preliminary results, *i.e.*, for the producer/exporter, Fine Furniture (Shanghai) Limited. Fine Furniture maintains that, by omitting a reference to Double F in the CBP instructions, the Department “invites mistakes by the ports in liquidating entries of Fine Furniture’s merchandise that are invoiced through Double F.”²³ Fine Furniture argues that it is necessary to add Double F to the CBP instructions in order to implement the final results, reflect the relationship between Fine Furniture and Double F, and avoid mistakes by the ports in liquidating entries of Fine Furniture that are invoiced through Double F.

In its case brief, Fine Furniture cites to *Walgreen Co. v. United States* as a case in which the importer-specific liquidation instructions issued by the Department failed to account for the commercial relationship among the parties. Fine Furniture alleges that in that case the Department failed to give imports sold through a reseller the same rate assigned to the reviewed respondent. According to Fine Furniture, when the respondent was not listed as an “exporter” in the documents but rather as a “manufacturer,” it resulted in a misunderstanding by CBP and the misapplication of another rate to the reseller, which in turn, became the subject of litigation before the Court of International Trade.

Department’s Position:

The Department disagrees with Fine Furniture that it is appropriate to list Double F on the CBP instructions. First, section 751(a)(2)(C) does not require the Department to add Double F to its CBP instructions, because Double F has never been subject to the Department’s review. The Department did not find Fine Furniture and Double F to be cross-owned for the purpose of allocating subsidies in the underlying countervailing duty investigation or in subsequent countervailing duty administrative reviews. In the investigation and subsequent administrative reviews, Fine Furniture did not allege that Double F received subsidies; thus, the Department did not review Double F under the cross-ownership analysis. The Department’s only discussion of Double F in the most recent countervailing duty administrative review of Fine Furniture noted

²¹ See Fine Furniture’s Case Brief at 3.

²² *Id.*

²³ *Id.* at 1.

that it issued invoices for Fine Furniture's sales of subject merchandise to the United States.²⁴ Cash deposit and liquidation instructions issued to CBP after the countervailing duty investigation and subsequent administrative reviews involving Fine Furniture have not separately identified Double F. Accordingly, while the Department acknowledges that section 751(a)(2)(C) of the Act directs the Department to instruct CBP to liquidate entries "pursuant to the review," it is the Department's position that separately identifying Double F would violate that provision, as the Department would be instructing CBP to liquidate Double F's entries at a rate even though the company was not reviewed (either separately or as part of Fine Furniture's cross-ownership analysis).

Second, Fine Furniture's argument that the Department should treat Double F and Fine Furniture as if cross-owned because the Department found them "intertwined" and collapsed them in the parallel antidumping duty administrative reviews inaccurately represents our antidumping and countervailing duty procedures. Fine Furniture's argument ignores both the substance and the purpose of the different regulations that the Department applies in antidumping and countervailing duty proceedings. Antidumping duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below normal value.²⁵ In antidumping duty proceedings, companies are determined to be a single entity, or collapsed, when they are affiliated and their operations are significantly intertwined.²⁶ However, countervailing duties are levied on subsidized imports to offset the unfair competitive advantages created by foreign government subsidies, whether they are conferred directly on a respondent or are conferred on a company cross-owned by the respondent and attributed to the respondent.²⁷ The Department only reaches the issue of cross ownership when a company affiliated with the respondent has also received subsidies. A finding of cross ownership is the mechanism that enables the Department to attribute to the respondent subsidies granted to another company, *i.e.*, the cross-owned affiliate. In this instance, and especially because Fine Furniture was not selected as a mandatory respondent, there is no evidence that Double F did (or did not) receive subsidies such that the Department would have to consider whether to attribute any such subsidies to Fine Furniture.

Accordingly, that the Department has found Fine Furniture and Double F to be affiliated and intertwined in the parallel antidumping duty proceedings is irrelevant to the Department's cross-ownership and attribution of subsidies analysis in this countervailing duty proceeding.

Finally, in the prior review, covering the 2012 POR, the Department considered Fine Furniture's request to have Double F listed on CBP instructions.²⁸ The Department examined the CBP documentation for a sample sale of subject merchandise and found that the CBP documentation demonstrates that Fine Furniture is the manufacturer. In both this and the prior review, our cash

²⁴ See *Multilayered Wood Flooring From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 80 FR 41007 and accompanying Issues and Decision Memorandum at 8.

²⁵ See *United States v. American Home Assur. Co.*, 964 F. Supp. 2d 1342, 1353 (Fed. Cir. 2014).

²⁶ See Section 771(33) of the Act; 19 CFR 351.401(f).

²⁷ See *Wolff Shoe Co. v. United States*, 141 F.3d 1116, 1117 (Fed. Cir. 1998).

²⁸ See Letter from Fine Furniture, re "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Ministerial Error Comments of Fine Furniture (Shanghai) Limited," dated July 13, 2015.

deposit instructions to CBP apply to subject merchandise “produced and/or exported by” Fine Furniture, and the liquidation instructions apply to the manufacturing or exporting company “Fine Furniture.” Our instructions to CBP are correct and do not “invite mistakes” so long as the CBP documentation continues to identify the merchandise imported as produced and/or exported by Fine Furniture, as it did in the 2012 review.

Fine Furniture’s reliance on *Walgreen Co. v. United States*²⁹ does not persuade us to change course. Unlike in *Walgreen*, Fine Furniture does not allege that the Department has misrepresented Fine Furniture’s status.³⁰ In *Walgreen*, the Court determined that a preliminary injunction should be granted to the plaintiff-importer because the Department’s instructions to CBP potentially mislabeled a mandatory respondent as a “manufacturer” of subject merchandise, rather than as an “exporter,” and mislabeled the “customers” as “exporters.” Accordingly, CBP began liquidating the plaintiff-importer’s entries of subject merchandise at the PRC-wide antidumping duty rate, rather than the significantly lower “separate rate” calculated for the mandatory respondent. However, the issue confronted by *Walgreen* is wholly different than Fine Furniture’s issue. Fine Furniture does not claim that its status was misrepresented in the CBP instructions, because it was not. In the instant case, Fine Furniture is requesting that Double F be treated identically to that of Fine Furniture (by adding its name under “Company Name” in the liquidation instructions and as a “Producer and/or exporter” in the cash deposit instructions.) This treatment would be unlawful, unnecessary and redundant. The separate identification of Double F could have inappropriate consequences because Double F was not subject to individual review by the Department. Further, because Double F is neither an exporter nor a manufacturer, it would be inappropriate to assign Double F a countervailing duty rate. Double F’s record documentation demonstrates that the merchandise contained in its invoices qualifies for Fine Furniture’s rate.

Comment 2: Whether Penghong’s Electricity Rates Are Calculated Incorrectly

Selection of Zhejiang Benchmark for the Various Time Periods for Penghong

Penghong’s Comments:

Penghong disputes certain benchmarks used by the Department in its preliminary benefit calculation for electricity for the LTAR program. Specifically, Penghong contends that the benchmark rates from Zhejiang province are not comparable to the rates in Liaoning province, the province in which Penghong is located.³¹ Penghong claims that the benchmark rates for Liaoning province are broken out into three periods: valley, normal, and peak. In contrast, Penghong contends that the rates in Zhejiang province are broken out into four periods: valley, normal, peak, and high peak.³² According to Penghong, the Department compared the Zhejiang province “valley” price to the Liaoning province “valley” price, but incorrectly compared the

²⁹ 34 CIT 1574, 1576-77 (2010) (granting a preliminary injunction to the plaintiff-importer when the Department’s instructions to CBP potentially mislabeled a mandatory respondent as a “manufacturer” of subject merchandise rather than as an “exporter,” and mislabeled the “customers” as “exporters”).

³⁰ See Fine Furniture’s Case Brief at 4.

³¹ See letter from Penghong, re: “*Multilayered Wood Flooring from the People’s Republic of China-Dalian Penghong Case Brief*,” dated February 17, 2016 (Penghong’s Case Brief) at 1.

³² See Penghong’s Case Brief at 2.

Zhejiang “peak” price to the Liaoning “normal” price and Zhejiang “critical peak” price to the Liaoning “peak” price.³³ Therefore, Penghong alleges that the Department did not properly compare each time period category of Penghong’s electricity rates to the rates reported for Zhejiang province. Penghong states that in the final results, the Department should adjust this comparison to compare properly each time period category between the two provinces. Penghong suggests that a proper comparison would be to compare “normal” to “normal” prices and “peak” to “peak” prices; omitting the Zhejiang’s “critical peak” prices.³⁴

Department Position:

We disagree with Penghong that the benchmark prices for Zhejiang province are broken out into four periods: valley, normal, peak, and high peak. In examining the GOC’s tariff schedule for Zhejiang province, we find that the rates are divided into three time periods: off-peak price, peak price, and sharp price (also labeled critical peak).³⁵ Accordingly, we disagree with Penghong’s claims that the “peak” and “critical peak” rates for Zhejiang province are not comparable to the “normal” and “peak” rates in Liaoning province. As in other cases in which we have examined the GOC’s provision of electricity for LTAR,³⁶ the benchmarks on this record for Zhejiang province include three different electricity rates, a demand-based “valley, normal, and peak” pricing structure. In the instant review, the English translation of the Zhejiang province benchmark chart labels the time categories “off peak, peak, and sharp” in the heading of the table, and “valley, peak, critical peak” in the footnotes to the table; it also contains a reference that “Large industrial electricity, normal industrial & commercial electricity break down to six time periods, critical peak (19:00-21:00), peak (8:00-11:00,13:00-19:00; 21:00-22:00),valley (11:00-13:00, 22:00-8:00 of the following day).”³⁷ There is no evidence on the record to conclude that “critical peak” is anything other than the GOC’s “sharp” period. Accordingly, we have interpreted these labels consistently with our past practice, using slightly varied nomenclature from that used by the GOC, to represent a three-tiered pricing structure that we have termed “valley, normal, and peak” pricing. We selected the highest rate from the highest tier of the GOC’s benchmark chart—named “sharp” or “critical peak”—and used that to calculate Penghong’s “peak” electricity use.³⁸ We selected the mid-tier rate—labeled “peak” in the GOC’s benchmark chart—and used that rate to calculate a rate for Penghong’s “normal” electricity use.³⁹ Finally, we used the lowest-tier rate—labeled as both “off peak” and “valley” on the GOC’s benchmark chart—as the “valley” rate. Thus, it appears that Penghong’s arguments relate to translation differences and do not affect the comparability of the benchmarks used in the calculations. Our comparisons already do what Penghong requests—*i.e.*, compare

³³ *Id.*

³⁴ *Id.*

³⁵ See GOCQR at Exhibit 6, footnote 2 for Electricity Sales Schedule of Zhejiang Grid..

³⁶ See, e.g., *Hardwood Plywood from the PRC*, and accompanying IDM at “Provision of Electricity for LTAR;” *Drill Pipe First Administrative Review*, and accompanying IDM at “Provision of Electricity for LTAR;” *Wind Towers from the PRC*, and accompanying IDM at “Provision of Electricity for LTAR;” *Wire Strand from the PRC*, and accompanying IDM at “Federal Provision of Electricity for LTAR;” and *Coated Paper from the PRC*, and accompanying IDM at “Provision of Electricity.”

³⁷ See GOCQR at Exhibit 6, Electricity Sales Schedule of Zhejiang Grid, Footnote 2.

³⁸ See Penghong Final Calculation Memorandum.

³⁹ *Id.* The “sharp” category rate was also used as the “peak” benchmark rate in *Wind Towers from the PRC*.

“normal” to “normal” prices and “peak” to “peak” prices—because we interpret “critical peak” prices to be the same tier as “sharp” prices.

Benchmarks need not be identical, but need to be “comparable.”⁴⁰ We maintain that the benchmarks we selected are comparable to Penghong’s consumption in that they follow a three-tiered system with prices that increase during high-demand times and they are the best available benchmarks on the record. The fact that the exact hours of the day and number of hours assigned to each period may not align perfectly does not render our benchmarks incomparable for these purposes. In addition, as explained in the *Investigation Final*, the Department determined that the GOC had not acted to the best of its ability and, therefore, it was appropriate to determine a benchmark using AFA, in accordance with sections 776(a) and (b) of the Act.⁴¹ No evidence on the current administrative record contradicts this determination. The “sharp” or “critical peak” category appears to be the highest price for the same usage category as Penghong’s “peak” usage. Accordingly, we are continuing to use the “sharp”/“critical peak” rates as the benchmark for Penghong’s “peak” electricity consumption and the “peak” rates as the benchmark for Penghong’s “normal” electricity consumption.

Selection of Maximum Demand as the Basic Electricity Tariff Benchmark for Large Industry in Zhejiang Province instead of Transformer Capacity

Penghong’s Comments:

Penghong alleges that, although the Department properly determined and selected “transformer capacity” to be used preliminarily as the benchmark for large industry for Zhejiang province in the Penghong electricity calculation, the Department actually used the “maximum demand” for large industry in Zhejiang province as the benchmark. Penghong claims that this error appears to have occurred because of a translation error in the Zhejiang Grid electricity sales schedule submitted by the GOC in its initial questionnaire.⁴² According to Penghong, the English translations for the two column headings were inadvertently transposed.⁴³ Penghong claims that the Chinese version of the Zhejiang electricity sales schedule for “transformer capacity yuan/KVA/month” for large industry has “30” as the fee while the heading for the column that reports “40” as the fee actually reads “maximum demand yuan/KW/month.”⁴⁴

⁴⁰ See 19 CFR 351.511(2)(i).

⁴¹ See *Investigation Final* and accompanying IDM, “GOC – Electricity” at 2-3.

⁴² See Letter from the GOC, “Response of the Government of the People’s Republic of China to the Department’s Questionnaire: Multilayered Wood Flooring From the People’s Republic of China (C-570-971)(POR3)” (July 16, 2015) (GQR) at Exhibit 6.

⁴³ GOCQR at Exhibit 6-ElectricitySales Schedule of Zhejiang Grid.

⁴⁴ *Id.*

Department Position:

The Department examined the electricity sales schedule for the Zhejiang grid submitted in the GOC questionnaire response,⁴⁵ and agrees that the English translations for the two column headings “Maximum demand” and “Transformer capacity” appear to have been transposed. We agree that the original Chinese version of the Zhejiang electricity sales schedule for “Transformer capacity- yuan/KVA/month” for large industry reports “30” as the rate and the “Maximum demand-yuan/KW/month” heading for large industry reads “40.” The Department has corrected the electricity calculations and adjusted the rate for Penghong accordingly.

Based on our revised calculations, Lizhong received a countervailable subsidy rate for electricity of 0.65 percent *ad valorem*, and Penghong received a countervailable subsidy rate for electricity of 1.63 percent *ad valorem*.

Recommendation

We recommend applying the above methodologies for these final results.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

(Date)

⁴⁵ *Id.*