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May 20, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Rescission of the 2014-
2015 Antidumping Duty New Shipper Reviews of Multilayered
Wood Flooring from the People's Republic of China

SUMMARY

In response to requests from Dongtai Zhangshi Wood Industry Co., Ltd. (“Zhangshi”) and Huzhou Muyun Wood Co., Ltd. (“Muyun”), the Department of Commerce (“Department”) is conducting new shipper reviews of the antidumping duty (“AD”) order on multilayered wood flooring (“wood flooring”) from the People’s Republic of China (“PRC”).¹ The period of review (“POR”) is December 1, 2014 through May 31, 2015. As discussed below, the Department of Commerce (the “Department”) preliminarily determines that Zhangshi and Muyun did not satisfy the statutory requirements² to request a new shipper review and did not make a *bona fide* sale during the period of review (“POR”). As such, the Department intends to rescind the new shipper reviews of Zhangshi and Muyun.

If these preliminary results are adopted in our final results of review, the assessment rate to which Zhangshi’s and Muyun’s shipments will be subject will not be affected by this review. However, Zhangshi’s and Muyun’s entries are currently covered by the on-going administrative review of the antidumping duty order on multilayered wood flooring from the PRC covering the period December 1, 2014 through November 30, 2015. If these preliminary results are adopted in our final results of review, the assessment rate applicable to Zhangshi’s and Muyun’s shipment will be determined in that administrative review.

¹ See *Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews; 2014-2015*, 80 FR 45192 (July 29, 2015).

² On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.



Interested parties are invited to comment on the preliminary rescission of these reviews. We intend to issue the final results or final rescission of the review no later than 90 days from the date the preliminary results are issued, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (“the Act”).

BACKGROUND

In response to requests from Zhangshi and Muyun, the Department initiated new shipper reviews of the antidumping duty order on wood flooring from the PRC, covering the POR of December 1, 2014 through May 31, 2015.³ The Department extended the deadline for issuing the preliminary results of these new shipper reviews until May 20, 2016.⁴

The Department sent antidumping duty questionnaires to Zhangshi and Muyun, to which the companies responded in a timely manner. Between September 2015 and May 2016, the Department issued supplemental questionnaires to Zhangshi and Muyun, to which they also responded in a timely manner.

SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) 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

³ See Letter from Zhangshi to the Secretary of Commerce “Multilayered Wood Flooring from the People’s Republic of China; A-570-970; Request for Antidumping Duty New Shipper Review,” dated June 22, 2015 (“Zhangshi Initiation Request”); Letter from Muyun to the Secretary of Commerce “Multilayered Wood Flooring from the People’s Republic of China Request for New Shipper Review,” dated June 23, 2015 (“Muyun Initiation Request”).

⁴ The Department initially extended the deadline to May 16, 2016. See Memoranda to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Maisha Cryor, International Trade Analyst, Office IV, Antidumping and Countervailing Duty Operations, dated January 13, 2016. However, the Department exercised its discretion to toll all administrative deadlines for four days due to the closure of the Federal Government because of Snowstorm “Jonas”. See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas,” dated January 27, 2016. Thus, all of the deadlines in this segment of the proceeding have been extended by four business days, and the revised deadline for the preliminary results of these reviews is May 20, 2016.

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 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; 4412.31.3175; 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; 4412.31.5175; 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; 4418.72.9500; and 9801.00.2500.

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

DISCUSSION OF THE METHODOLOGY

Bona Fides Analysis

Consistent with our practice and recent amendments to section 751(a)(2)(B) of the Act, the Department examines the *bona fides* of sales in new shipper reviews.⁵ This practice was affirmed by the Court of International Trade (“CIT”) so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the respondent’s usual commercial practice would dictate.⁶ When examining the *bona fides* of sales in new shipper reviews the Department considers a number of factors, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”⁷ In *TTPC*, the CIT affirmed that “any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,”⁸ and found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”⁹ In evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices, and therefore a *bona fide* sale, the Department often considers, *inter alia*, such factors as (1) the timing of the sale, (2) the price and quantity of the sale, (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.¹⁰ Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.¹¹ When the new shipper review is based on only one sale and the Department finds that transaction atypical, “exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of {the Department’s} antidumping duty calculation.”¹²

Based on the totality of the circumstances surrounding the single sale under review for each company, we preliminarily determine that the sales were not *bona fide* commercial transactions and should not be used to calculate an assessment rate or a cash deposit rate. Namely, with respect to Zhangshi’s single sale, the sales price, the timing of the payment, the implementation of the terms of sale and the inconsistent responses from the importer call into question whether the sale is indicative of normal business practices. With respect to Muyun’s single sale, we find that the sales price, the lack of record evidence demonstrating that Muyun’s customer resold the merchandise for a profit, the timing of the sale and the negotiation period call into question whether the sale is indicative of normal business practices. Because the *bona fide* sales analysis

⁵ See, e.g., *Honey from the People’s Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

⁶ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (Ct. Int’l Trade 2005) (“*New Donghua*”) (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)).

⁷ See *New Donghua*, 374 F. Supp. 2d at 1342.

⁸ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (Ct. Int’l Trade 2005) (“*TTPC*”).

⁹ *Id.* at 1263.

¹⁰ *Id.* at 1249-1250.

¹¹ *Id.* at 1249.

¹² *Id.*

involves business proprietary information, a full discussion of our preliminary analysis is set forth in the accompanying *Bona Fide Sales Analysis Memoranda*.¹³

In light of our decision to preliminarily find that Zhangshi's and Muyun's single POR sales are not *bona fide*, we cannot rely on these sales to calculate a dumping margin. Accordingly, there is no sale upon which we can base these reviews and, therefore, the Department intends to rescind these reviews.¹⁴

CONCLUSION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date

¹³ See Memorandum to Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, from Robert Galantucci, International Trade Analyst, Office IV, Antidumping and Countervailing Duty Operations entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Bona Fide Sale Analysis for Dongtai Zhangshi Wood Industry Co., Ltd." dated concurrently with and hereby adopted by this memorandum; see also Memorandum to Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, from Aleksandras Nakutis, International Trade Analyst, Office IV, Antidumping and Countervailing Duty Operations entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Bona Fide Sale Analysis for Huzhou Muyun Wood Co., Ltd., Ltd." dated concurrently with and hereby adopted by this memorandum.

¹⁴ See, e.g., *TTPC*, 366 F. Supp. 2d at 1249.