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May 24, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Rescission of the 2013-2014 Antidumping Duty New Shipper Review: Multilayered Wood Flooring from the People's Republic of China

SUMMARY

As discussed below, the Department of Commerce (the "Department") preliminarily determines that Qingdao Barry Flooring Co., Ltd ("Qingdao Barry") did not make a *bona fide* sale during the period of review ("POR"), as required by section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act").¹ As such, the Department is unable to calculate a weighted-average dumping margin based upon that sale and is preliminarily rescinding the new shipper review of Qingdao Barry.

If this preliminary decision to rescind the new shipper review is adopted in our final results, the assessment rate to which Qingdao Barry's shipment will be subject will not be affected by this review. However, Qingdao Barry's entry is currently covered by the on-going administrative review of the antidumping duty order on multilayered wood flooring ("MLWF") from the People's Republic of China ("PRC") covering the period December 1, 2013 through November 30, 2014. If the Department proceeds to a final rescission, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend entries during the period December 1, 2013, through November 30, 2014 of subject merchandise exported by Qingdao Barry until CBP receives instructions relating to the administrative review of this order covering the period December 1, 2013 through November 30, 2014.²

¹ 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.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041, 6042 (February 4, 2015).



Interested parties are invited to comment on the preliminary rescission of this review. 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)(iii) of the Tariff Act of 1930, as amended (“the Act”).

Background

In response to a request from Qingdao Barry, the Department initiated a new shipper review of the antidumping duty order on MLWF from the PRC covering the period December 1, 2013 through November 30, 2014.³ The Department sent an antidumping duty questionnaire to Qingdao Barry, to which the company responded in a timely manner. In January 2016, the Department issued a supplemental questionnaire to Qingdao Barry, to which it responded in a timely manner. The Department received comments from Qingdao Barry on surrogate country and surrogate value selection.⁴ No other party commented. The Department extended the deadline for issuing the preliminary results of this new shipper review until May 20, 2016.⁵

Scope of the Order

The product covered by the order is multilayered wood flooring, which is composed of an assembly of two or more layers or plies of wood veneer(s)⁶ 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 *Multilayered Wood Flooring From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review*, 80 FR 65200 (October 26, 2015) (“*Initiation Notice*”).

⁴ See “Multilayered Wood Flooring from the People’s Republic of China: Submission of Comparable Surrogate Country Comments,” dated February 16, 2016; *see also* “Multilayered Wood Flooring from the People’s Republic of China: Submission of Surrogate Value Information,” dated February 23, 2016.

⁵ See the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Maisha Cryor, Office IV, Antidumping and Countervailing Duty Operations, entitled, “Multilayered Wood Flooring from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review” dated April 14, 2016.

⁶ 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.

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 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; 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 Fide Analysis

Pursuant to section 751(a)(2)(B)(iv) of the Act, any weighted average dumping margin determined in a NSR must be based solely on *bona fide* sales during the period of review. Where a review is based on a single sale, exclusion of that sale as non-*bona fide* necessarily must end the review.⁷

To determine whether a sale in a new shipper review is *bona fide*, the Department considers, depending on the circumstances surrounding such sales:

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.⁸

In examining the totality of the circumstances, the Department looks to whether the transaction is “commercially unreasonable” or “atypical of normal business practices.”⁹

Although some *bona fide* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.¹⁰ In *TTPC*, the U.S. Court of International Trade affirmed the Department’s practice of considering 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,”¹¹ and found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”¹² Moreover, the Department’s practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an AD order.¹³ Thus, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice.¹⁴

⁷ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (*TTPC*).

⁸ See Section 751(a)(2)(B)(iv) of the Act.

⁹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (*New Donghua*), citing *Windmill Int’l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1313 (CIT 2002); see also *TTPC*, 366 F. Supp. 2d at 1249-50.

¹⁰ See *New Donghua*, 374 F. Supp. 2d at 1340, n.5, citing *TTPC*, 366 F. Supp. 2d at 1260, and *Certain Preserved Mushrooms From the People’s Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

¹¹ See *TTPC*, 366 F. Supp. 2d at 1250.

¹² *Id.* at 1263.

¹³ See *New Donghua*, 374 F. Supp. 2d at 1339.

¹⁴ *Id.*

Based on the totality of the circumstances surrounding the sale under review, we preliminarily determine that the sale made by Qingdao Barry during the POR was not a *bona fide* commercial transaction and cannot be used to calculate an assessment rate or a cash deposit rate. Namely, the atypical price, certain unusual circumstances surrounding the sale, and Qingdao Barry's failure to demonstrate a profit on the resale of the subject merchandise, when viewed together with other circumstances surrounding the sale, call into question whether the sale is indicative of normal commercial practices. Because the *bona fide* sales analysis involves business proprietary information, a full discussion of our preliminary analysis is set forth in the *Bona Fide Sales Analysis Memorandum*.¹⁵

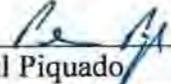
Because we preliminarily find that Qingdao Barry's single POR sale is not a *bona fide* sale, we cannot rely on this sale to calculate a dumping margin. Given the determination that Qingdao Barry did not make a *bona fide* sale during the POR, there is no sale upon which we can base this review and, therefore, the Department is preliminarily rescinding this review.¹⁶

CONCLUSION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree


Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 MAY 2016
(Date)

¹⁵ See Memorandum to Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, from Maisha Cryor, 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: Preliminary *Bona Fide* Sale Analysis for Qingdao Barry Flooring Co., Ltd." dated concurrently with and hereby adopted by this memorandum.

¹⁶ See, e.g., *TTPC*, 366 F. Supp. 2d at 1249.