

Dongguan Bon Ten Furniture Co., Ltd. v. United States
Court No. 09-00396

FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND
(Public Version)

A. Summary

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“Court”) on June 8, 2010, *Dongguan Bon Ten Furniture Co., Ltd. v. United States*, Court No. 09-00396. This remand concerns the Department’s final results, as amended, of the administrative review of the antidumping duty order on wooden bedroom furniture (“WBF”) from the People’s Republic of China (“PRC”) covering the period January 1, 2007, through December 31, 2007 (“2007 AR”).¹ Pursuant to information submitted during the course of the remand proceeding, the Department has reconsidered its earlier determination to treat Dongguan Bon Ten Furniture Co., Ltd. (“Bon Ten”) as part of the PRC-wide entity and, instead, has determined to rescind the administrative review with respect to Bon Ten.

B. Background

On March 7, 2008, the Department initiated the 2007 AR, identifying Bon Ten as one of the PRC exporters requested for review.² On February 9, 2009, the Department published its preliminary results of the 2007 administrative review of the antidumping duty order on WBF from the PRC.³ In the *Preliminary Results*, the Department preliminarily determined that Bon Ten did not demonstrate eligibility for separate-rate status because it did not provide either a

¹See *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009) (“*Final Results*”), and accompanying Issues and Decision Memorandum, as amended by *Wooden Bedroom Furniture From the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 55810 (October 29, 2009) (“*Amended Final Results*”).

separate rate application or certification on the record of the administrative review. Therefore, the Department treated Bon Ten as part of the PRC-wide entity.

After release of the *Preliminary Results*, on February 5, 2009, Bon Ten submitted a letter to the Department in which it stated that Bon Ten had entered one shipment of WBF during 2007, and that this single shipment was reviewed by the Department in a new shipper review (“NSR”)⁴ for the period January 1, 2007, through July 31, 2007.⁵ Bon Ten further argued that it had not participated in the 2007 AR because: (1) the NSR period of review (“POR”) (*i.e.*, January 1, 2007, through July 31, 2007) overlapped in part with the 2007 AR POR (*i.e.*, January 1, 2007, through December 31, 2007); (2) Bon Ten was granted separate rate status in *NSR Final Results*; and (3) Bon Ten had no additional entries of subject merchandise during the remaining months of the 2007 AR (*i.e.*, August 1, 2007, through December 31, 2007). Bon Ten also argued that, pursuant to 19 CFR 351.214(j)(1), the Department should rescind the 2007 AR with respect to Bon Ten because its single shipment during the 2007 AR POR had been reviewed in the NSR. However, Bon Ten did not include the requisite no-shipment certification with its February 5, 2009, submission.⁶

On August 17, 2009, the Department published its *Final Results*. In response to Bon Ten’s arguments in its administrative case brief, the Department determined not to rescind the administrative review with respect to Bon Ten because Bon Ten had not demonstrated that it had

² See *Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People’s Republic of China*, 73 FR 12387 (March 7, 2008) (“*Initiation Notice*”).

³ See *Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Administrative Review*, 74 FR 6372, 6377 – 6378 (February 9, 2009) (“*Preliminary Results*”).

⁴ See *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Fourth New Shipper Reviews*, 73 FR 64916 (October 31, 2008) (“*NSR Final Results*”).

⁵ See Bon Ten’s letter to the Department regarding, “Wooden Bedroom Furniture From China: Requested Treatment in Final Results for Dongguan Mu Si Furniture Co., Ltd. and Dongguan Bon Ten Furniture Co., Ltd.,” dated February 5, 2009 (“February 5, 2009, submission”).

⁶ See *id.*; see also *Final Results* unchanged in *Amended Final Results*.

no shipments during the 2007 AR POR outside of the single shipment reviewed during the NSR.⁷ Additionally, because Bon Ten had not demonstrated its eligibility for a separate rate in the 2007 AR, the Department maintained its determination to treat Bon Ten as part of the PRC-wide entity.⁸

On August 14, 2009, Bon Ten submitted comments alleging that the Department made a ministerial error with respect to the *Final Results*. Bon Ten's ministerial error allegation focused on the Department's finding in the *Final Results* that Bon Ten had not provided any assertion prior to the submission of its case brief that it had no shipments during the 2007 AR POR outside of the shipment reviewed in the context of the NSR, arguing that the Department did not consider its February 5, 2009, submission in that finding.

In the *Amended Final Results*, the Department determined that, although it had inadvertently overlooked Bon Ten's February 5, 2009, submission for purposes of the *Final Results*, Bon Ten's allegation did not reflect a ministerial error allegation, but rather required reconsideration of a methodological issue, namely whether the review should be rescinded with respect to Bon Ten based upon its February 5, 2009, submission. Accordingly, the Department continued to treat Bon Ten as part of the PRC-wide entity for the administrative review in the *Amended Final Results*; however, the Department clarified that Bon Ten lost the separate rate status it was granted during the NSR starting on August 1, 2007, which is the first day of the administrative review that did not overlap with Bon Ten's completed NSR POR (*i.e.*, January 1, 2007, through July 31, 2007).⁹

⁷ See *Final Results* at Comment 29.

⁸ See *id.*

⁹ See *Amended Final Results* and the Department's memorandum entitled, "Ministerial Error Memorandum for the Final Results of the 2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China," dated October 7, 2009 at Issue 4.

On October 16, 2009, Bon Ten filed a complaint with the Court challenging the Department's determination not to rescind the review with respect to Bon Ten and its determination that it could not address its failure to consider the February 5, 2009, submission as a ministerial error. On June 7, 2010, the government filed an unopposed motion for voluntary remand with the Court so that the Department could fully consider and evaluate the overlooked record evidence, prepare draft remand results, issue a draft to the parties for comment, analyze those comments, and take such action as may be appropriate pertaining to Bon Ten. On June 8, 2010, the Court granted the Department's voluntary remand motion.

On June 11, 2010, we issued a supplemental questionnaire to Bon Ten, in which we provided Bon Ten the opportunity to submit a no shipment certification. On June 15, 2010, Bon Ten submitted a certification that it had no shipments of WBF during the period August 1, 2007, through December 31, 2007, the portion of the 2007 AR POR that was not covered by the preceding NSR POR. On July 16, 2010, we released to all interested parties for comment: (1) our draft redetermination pursuant to the remand; (2) a U.S. Customs and Border Protection ("CBP") data listing of all type 3 entries (*i.e.*, entries subject to antidumping and countervailing duty tariffs) classified under subheadings 7009.92.5000, 9403.50.9080, and 9403.50.9040 of the Harmonized Tariff Schedule of the United States that entered the United States during the 2007 AR POR and were exported/manufactured by Bon Ten; and (3) a draft version of Bon Ten's amended final cash deposit instructions reflecting the draft redetermination results, which the Department intends to send to CBP, pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.¹⁰ We received no comments from

¹⁰ See the Department's memorandum entitled, "2007 Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Due Date for Interested Parties to Submit Comments on Draft Results of Redetermination Pursuant to Remand," dated July 16, 2010.

interested parties on the Department's draft redetermination results, CBP data, or the draft version of the cash deposit instructions for Bon Ten.

C. Analysis

In the *Initiation Notice*, we instructed companies to notify the Department within 30 days of the publication of the *Initiation Notice* if they had no shipments, entries or sales of subject merchandise during the POR. Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to companies that had no shipments, entries, or sales of the subject merchandise during the POR. Further, pursuant to 19 CFR 351.214(j), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the POR, the merchandise sold in the U.S. was subject to an NSR, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act").

We find that substantial evidence on the record supports Bon Ten's request in its February 5, 2009, submission that the Department rescind the administrative review with respect to it because its sales during the 2007 AR POR were reviewed in the context of the NSR. Specifically, in the *NSR Final Results*, the Department reviewed Bon Ten's sales during the NSR POR (*i.e.*, January 1, 2007, through July 31, 2007). Additionally, the CBP import data did not conflict with Bon Ten's June 15, 2010, certification that it had no additional shipments during the portion of the 2007 AR POR that was not covered by the NSR POR (*i.e.*, August 1, 2007, through December 31, 2007).¹¹ Therefore, we have determined that record evidence supports Bon Ten's claim that it did not have any shipments, sales or entries of subject merchandise to the United States during the 2007 AR POR that were not reviewed by the Department in the context

¹¹ See CBP import data for the period January 1, 2007 through December 31, 2007, at attachment 1.

of the NSR. Thus, it is appropriate to rescind the 2007 AR administrative review with respect to Bon Ten, pursuant to 19 CFR 351.214(j) and 19 CFR 351.213(d)(3).

Pursuant to the Court's order, we have reconsidered the record information with regard to Bon Ten's separate-rate status for the 2007 AR. Based on the analysis detailed above, we have determined to rescind the 2007 AR with respect to Bon Ten pursuant to 19 CFR 351.214(j) and 19 CFR 351.213(d)(3). The cash-deposit rate for Bon Ten will remain the rate established in the final results of the NSR until completion of any subsequent administrative review of Bon Ten, and the Department will instruct CBP accordingly.¹²

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

¹² See *NSR Final Results*.

WBFURNITURE_CN_2007_CNDONBONHUM
SOURCE: CBP'S Automated Commercial System (ACS)

Obs	CNTRYOR	CNTRYEX	ORGNAME	EXPNAME	ENTRYNO	ENTRYDTE	HTS
1	[
2	[

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