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February 1, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Wooden Bedroom Furniture from
the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC") for the period of review ("POR") January 1, 2011, through December 31, 2011. The review covers fifteen exporters of the subject merchandise, including two mandatory respondents, Shanghai Maoji Imp And Exp Co., Ltd. ("Maoji") and Dongguan Huansheng Furniture Co., Ltd. ("Huansheng"). The Department preliminarily finds that a number of companies, including the two mandatory respondents, have not established their entitlement to separate rate status and, therefore, they have been treated as part of the PRC-wide entity. The Department has preliminarily granted a separate rate to three companies that demonstrated eligibility for separate rate status. The rate assigned to each of these companies is explained below. The Department also preliminarily determines that six companies have made no shipments of subject merchandise during the POR.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").



Background

On January 4, 2005, the Department published in the Federal Register the antidumping duty order on wooden bedroom furniture from the PRC.¹ On January 3, 2012, the Department notified interested parties of their opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in January 2012, including the antidumping duty order on wooden bedroom furniture from the PRC.² In January 2012, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (“Petitioners,” and “AMFC”) and domestic interested parties, Kimball International, Inc., Kimball Furniture Group, Inc. and Kimball Hospitality Inc. (collectively, “Kimball”), and Ashley Furniture Industries, Inc. (“Ashley”), and certain foreign exporters requested that the Department conduct an administrative review.

In total, the Department received review requests covering 198 companies or company groupings. On February 29, 2012, the Department published a notice initiating an antidumping duty administrative review of wooden bedroom furniture from the PRC covering 198 companies or company groupings and the period January 1, 2011 through December 31, 2011.³

From March through May 2012, Petitioners withdrew numerous review requests in a timely manner, and Kimball and Ashley withdrew all of their review requests. On August 29, 2012, the Department published a notice rescinding the review with respect to 100 companies or company groupings which had previously established separate rates and for which all review requests had been withdrawn.⁴ In this notice the Department also stated that although review requests were withdrawn by all parties for 80 companies or company groupings which did not have separate rates, those companies remain under review as part of the PRC-wide entity and the Department intends to rescind the review with respect to these companies at the final results.⁵

The Department originally extended the deadline for the preliminary results of the administrative review until January 30, 2013.⁶ 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. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now February 1, 2013.⁷

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People’s Republic of China, 70 FR 329 (January 4, 2005).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 77 FR 83 (January 3, 2012) (“Opportunity to Request Administrative Review”).

³ See Wooden Bedroom Furniture From the People’s Republic of China: Initiation of Administrative Review, 77 FR 12235 (February 29, 2012) (“Initiation Notice”).

⁴ See Wooden Bedroom Furniture From the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review and Intent to Rescind, In Part, 77 FR 52311 (August 29, 2012) (“Partial Rescission Notice”).

⁵ See *id.*

⁶ See memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Wooden Bedroom Furniture from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated September 26, 2012.

⁷ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding “Tolling of the Administrative Deadlines As a Result of the Government Closure During Hurricane,” dated October 31, 2012.

Between July and October 2012, Huafeng and Maoji responded to the Department's antidumping questionnaire and supplemental questionnaires. Between July and November 2012, Petitioners commented on Huafeng and Maoji's responses. On August 3, 2012, Maoji notified the Department that it was not practicable for it to provide a response to the section D questionnaire or the supplemental Section A questionnaire and it did not provide such responses.⁸ On October 22, 2012, Huansheng notified the Department that it was withdrawing from participating in the administrative review.⁹

On September 26, 2012, Marvin Furniture (Shanghai) Co. Ltd. ("Marvin Furniture") submitted comments on the Partial Rescission Notice, objecting to being included among the companies for which the Department intends to rescind the review and which are part of the PRC-wide entity (i.e., have not established their eligibility for a separate rate).¹⁰ Marvin Furniture argues that because it filed a timely separate rate application and there is no indication that the Department found any deficiency with its application, the Department should assign a separate rate to Marvin Furniture at the completion of the review.¹¹ Marvin Furniture notes that it was not among the companies listed in the Partial Rescission Notice for which the Department was immediately rescinding the review. Marvin Furniture presumes that this was because Petitioners did not serve the withdrawal of their review request on Marvin Furniture and thus it was ineffective with respect to Marvin Furniture.¹²

Because all requests to review Marvin Furniture have been withdrawn, the Department is not reviewing Marvin Furniture as an individual company, and hence there is no basis to conduct any analysis with respect to Marvin Furniture in this review, including a separate rate analysis.¹³ Further, although counsel for Marvin Furniture indicates that it was not served with a copy of Petitioners' withdrawal of their review request, Marvin Furniture's counsel did not submit its letter of appearance and, thus, is not on the public service list.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with

⁸ See letter from Maoji to the Department of Commerce, regarding "Wooden Bedroom Furniture from China," dated August 3, 2012 ("Maoji Withdrawal Notice")

⁹ See letter from Huansheng to the Department of Commerce, regarding "Wooden Bedroom Furniture from the People's Republic of China – Withdrawal from Administrative Review," dated October 22, 2012 ("Huansheng Withdrawal Notice").

¹⁰ See Letter from Marvin Furniture to Honorable Rebecca M. Blank, Acting Secretary of Commerce, regarding, "Wooden Bedroom Furniture from the People's Republic of China: Partial Rescission of Administrative review and Intent to Rescind, in Part; 77 FR 52311 (August 29, 2012)," dated September 26, 2012 ("Marvin Furniture Comments"), at 1.

¹¹ See Marvin Furniture Comments, at 2.

¹² See *id.*

¹³ Marvin Furniture did not have a separate rate from a previous review, and, thus, it remains part of the PRC-wide entity.

or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,¹⁴ highboys,¹⁵ lowboys,¹⁶ chests of drawers,¹⁷ chests,¹⁸ door chests,¹⁹ chiffoniers,²⁰ hutches,²¹ and armoires;²² (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

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¹⁴ A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

¹⁵ A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

¹⁶ A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

¹⁷ A chest of drawers is typically a case containing drawers for storing clothing.

¹⁸ A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

¹⁹ A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

²⁰ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

²¹ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

²² An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

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book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;³² (9) jewelry armories;³³ (10) cheval mirrors;³⁴ (11) certain metal parts;³⁵ (12) mirrors that do not attach to, incorporate in, sit on, or hang over a

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³¹ An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

³² As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

³³ Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning "Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China," dated August 31, 2004. See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part, 71 FR 38621 (July 7, 2006).

³⁴ Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, i.e., a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part, 72 FR 948 (January 9, 2007).

³⁵ Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (i.e., wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds³⁶ and (14) toy boxes.³⁷

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the U.S. Harmonized Tariff Schedule (“HTSUS”) as “wooden . . . beds” and under subheading 9403.50.9080 of the HTSUS as “other . . . wooden furniture of a kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as “parts of wood.” Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, 9403.20.0018, or 9403.90.8041. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as “glass mirrors . . . framed.” The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review.

In the Initiation Notice and Opportunity to Request Administrative Review, parties were notified that, if the Department limited the number of respondents selected for individual examination, it would select respondents based on export/shipment data provided in response to the Department’s quantity and value (“Q&V”) questionnaire. The Department further stated its intention to limit the number of Q&V questionnaires issued in the review based on CBP data for U.S. imports classified under the HTSUS headings identified in the scope of the antidumping duty order on wooden bedroom furniture from the PRC and to send Q&V questionnaires to the 20 companies for which a review was requested with the largest total values of subject

³⁶ Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 72 FR 7013 (February 14, 2007).

³⁷ To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (ASTM) standard F963-03. Toy boxes are boxes generally designed for the purpose of storing children’s items such as toys, books, and playthings. See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 74 FR 8506 (February 25, 2009).

Further, as determined in the scope ruling memorandum “Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on a White Toy Box,” dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

merchandise imported into the United States during the POR according to CBP data.³⁸ The Initiation Notice also notified parties that they must timely submit separate rate applications or separate rate certifications in order to qualify for a separate rate.³⁹

On February 24, 2012, the Department issued Q&V questionnaires to the 20 companies for which a review was requested with the largest shipments by value according to information gathered from CBP. These questionnaires requested that the companies report the Q&V of their POR exports and/or shipments of WBF to the United States for the purpose of respondent selection. The Department received Q&V questionnaire responses from 28 companies or company groupings during March 2012. Of the 20 companies that were issued Q&V questionnaires, 19 responded and one company did not receive the Q&V questionnaire. We received responses from nine companies that were not sent a Q&V questionnaire. In addition, from March through May 2012, the Department received separate rate certifications (“SRC”) and separate rate applications (“SRA”) as well as requests from two companies to be treated as voluntary respondents.

Given its limited resources, and the fact that an administrative review was requested for 198 companies/company groupings, on April 3, 2012, the Department decided to individually examine the following company groupings, based upon the Q&V data: 1) Rui Feng Woodwork Co. Ltd. aka Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development Co., Ltd. aka Rui Feng Lumber Development (Shenzhen) Co., Ltd., and Dorbest Ltd. (collectively, “Dorbest Group”) and 2) Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., and Dongguan Yongpeng Furniture Co., Ltd. (collectively, “Shing Mark Group”).⁴⁰

On April 3, 2012, the Department issued the antidumping questionnaire to the Dorbest Group and the Shing Mark Group, and made the questionnaire available to the voluntary respondents. After all parties withdrew their review requests for both the Dorbest Group and the Shing Mark Group,⁴¹ the Department issued an amendment to the Respondent Selection Memorandum on June 1, 2012, naming Maoji and Huansheng as mandatory respondents in the review.⁴²

³⁸ See Initiation Notice, 77 FR at 12236.

³⁹ See Initiation Notice, 77 FR at 12237.

⁴⁰ See Memorandum to Abdelali Elouaradia, Director, Office 4, Antidumping and Countervailing Duty Operations, regarding, “2011 Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People’s Republic of China: Respondent Selection,” dated April 3, 2012 (“Respondent Selection Memorandum”).

⁴¹ All review requests were withdrawn for the Dorbest Group and the Shing Mark Group prior to the due date for the group to respond to section A of the antidumping questionnaire.

⁴² See Memorandum to Abdelali Elouaradia, Director, Office 4, Antidumping and Countervailing Duty Operations, regarding, “2011 Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People’s Republic of China,” dated June 1, 2012.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy (“NME”) Country Status

The Department considers the PRC to be an NME country.⁴³ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.⁴⁴ In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.⁴⁵ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting company in an NME country under the test established in Sparklers,⁴⁶ as amplified by Silicon Carbide.⁴⁷ 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.⁴⁸

In this administrative review, 58 companies submitted separate rate information. Of these companies, only four company/company groupings and the PRC-wide entity remain under review. These four company/company groupings are: (1) Hualing Furniture (China) Co., Ltd. (“Hualing”); Tony House Manufacture (China) Co., Ltd. (“Tony House Manufacture”); Buysell Investments Ltd. (“Buysell”); Tony House Industries Co., Ltd. (“Tony House Industries”) (collectively, “Tony House Group”); (2) Foliot Furniture Inc., aka Meubles Foliot Inc.

⁴³ See Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011) unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

⁴⁴ See Notice of 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, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006).

⁴⁵ See Initiation Notice, 77 FR at 12237.

⁴⁶ 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”).

⁴⁷ See 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”).

⁴⁸ 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).

(“Foliot/Meubles”),⁴⁹ Foliot Furniture Pacific Inc. (“Foliot Pacific”) and Foliot Furniture Corporation (“Foliot Corporation”) (collectively, “Foliot Group”); (3) Yeh Brothers World Trade, Inc. (“Yeh Brothers”); and (4) Baigou Crafts Factory of Fengkai (“Baigou Crafts”). The Tony House Group submitted an SRC for Hualing and Tony House Manufacture and no-shipment certifications for Buysell Investments Ltd. and Tony House Industries. Baigou Crafts submitted an SRC on behalf of itself. The Foliot Group submitted an SRA on behalf of Foliot/Meubles and its U.S. importers, Foliot Pacific and Foliot Corporation. As noted in the accompanying Federal Register notice, the Department intends to rescind the review with respect to Foliot Pacific and Foliot Corporation because they are importers. Thus, the Department has analyzed the SRA submitted by the Foliot Group with respect to Foliot/Meubles. As discussed below, we have preliminarily granted the Tony House Group, Foliot/Meubles, and Baigou Crafts separate rate status.

Yeh Brothers submitted both an SRC and a no shipment certification. Because the Department determined that Yeh Brothers made no shipments of subject merchandise during the POR, as discussed below, Yeh Brothers will retain the separate rate it established in a previous review.⁵⁰

Separate Rate Recipients

1) Wholly Foreign-Owned

Foliot/Meubles, Hualing and Tony House Industries reported that they are wholly owned by individuals or companies located in ME countries (collectively, “Foreign-owned SR Applicants”). The record indicates that the Foreign-owned SR Applicants are wholly foreign-owned and the Department has no evidence indicating that they are under the control of the PRC government. Therefore, there is no PRC ownership of the Foreign-owned SR Applicants and, because the Department has no evidence indicating that they are under the control of the PRC, a separate rate analysis is not necessary.⁵¹ Accordingly, the Department has preliminarily granted separate rate status to Foliot/Meubles and the Tony House Group. The Department granted the Tony House Group separate rate status based on the shipments of two companies in the group, Hualing and Tony House Manufacture, since the other two companies in the group, Buysell and Tony House Industries submitted no shipments certifications and there is no evidence that contradicts Buysell’s and Tony House Industries’ no shipment claims.

⁴⁹ In the Initiation Notice, the Department initiated a review for both Foliot Furniture Inc. and Meubles Foliot Inc.; however, Foliot has explained that it requested a review of only one exporter and it uses both names to refer to the exporter in the course of business because it has English and French customers. Because of this, we will treat Foliot Furniture Inc. and Muebles Foliot Inc. as one company.

⁵⁰ See Memorandum from Rebecca Pandolph to Abdelali Elouaradia, Director, Office 4, Antidumping and Countervailing Duty Operations, regarding “Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the PRC Analysis of No Sales/Shipments Claims Made by Certain Companies”, dated concurrently with this memo (“No Shipments Memo”).

⁵¹ 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); Brake Rotors From the People’s Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People’s Republic of China, 64 FR 71104 (December 20, 1999).

In its SRA, the Foliot/Meubles indicated that it does business under both an English and French name (i.e., Foliot Furniture Inc. and Meubles Foliot Inc., respectively). In the Initiation Notice, however, we initiated the review for both names. Thus, in these preliminary results we have clarified the matter by referring to the company under review as Foliot Furniture Inc. aka Meubles Foliot Inc.

2) *Wholly Chinese-Owned Companies*⁵²

i) *Mandatory Respondents*

Maoji and Huansheng filed SRCs and indicated that they were wholly Chinese-owned. As noted above, however, Maoji did not respond to all sections of the antidumping questionnaire or to a supplemental Section A questionnaire while Huansheng failed to answer two supplemental questionnaires and withdrew from participating in the review. In the Initiation Notice, we stated that “for exporters and producers who submit a separate-rate application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.”⁵³ Maoji failed to respond to all parts of the questionnaire. Although Maoji provided an SRC, it did not fully answer the Department’s questionnaire and supplemental questionnaire pertaining to its separate rate eligibility. Specifically, Maoji did not respond to questions regarding its ownership structure. Huansheng failed to answer all supplemental questionnaires and withdrew from participating in the review, and did not allow the Department to verify its responses. Therefore, the Department preliminarily determines that neither Maoji nor Huansheng have demonstrated eligibility for separate rate status. As a result, the Department is treating Maoji and Huansheng as part of the PRC-wide entity.⁵⁴ Therefore, the PRC-wide entity is now under review. We continue to use, as the PRC-wide rate, 216.01 percent which was calculated in the 2004-2005 NSR Final and applied to the PRC-wide entity in the 2004-2005 NSR Amended Final.⁵⁵

ii) *Baigou Crafts*

Baigou Crafts stated that it is a wholly Chinese-owned company. In accordance with our practice, the Department has analyzed whether Baigou Crafts has demonstrated the absence of de jure and de facto governmental control over its export activities.

⁵² See id.

⁵³ See Initiation Notice, 77 FR at 12237.

⁵⁴ See, e.g., Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903, 66906 (October 28, 2011) (where the Department assigned certain unresponsive mandatory respondents to the PRC-wide entity because they failed to demonstrate their separate rate eligibility) unchanged in Steel Wire Garment Hangers From the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012).

⁵⁵ See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of the 2004–2005 Semi–Annual New Shipper Reviews, 71 FR 70739, 70741 (December 6, 2006) (“2004-2005 NSR Final”); see also Amended Final Results of Antidumping Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People’s Republic of China, 72 FR 46957 (August 22, 2007) (“2004-2005 NSR Amended Final”).

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.⁵⁶

The evidence provided by Baigou Crafts supports a preliminary finding of de jure absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of companies; and (3) there are formal measures by the government decentralizing control of companies.⁵⁷

b) *Absence of De Facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices 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.⁵⁸

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 government control over export activities which would preclude the Department from assigning separate rates. For Baigou Crafts, we determine that the evidence on the record supports a preliminary finding of de facto absence of government control based on record statements and supporting documentation showing the following: (1) the respondent sets its own export prices independent of the government and without the approval of a government authority; (2) the respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) the respondent has the authority to negotiate and sign contracts and other agreements; and (4) the respondent has autonomy from the government regarding the selection of management.⁵⁹

The evidence placed on the record of this review by Baigou Crafts demonstrates an absence of de jure and de facto government control with respect the company's exports of the merchandise under review, in accordance with the criteria identified in Sparklers and Silicon Carbide. Therefore, we are preliminarily granting Baigou Crafts a separate rate.

⁵⁶ See Sparklers, 56 FR at 20589.

⁵⁷ See Letter from Baigou Crafts to the Department, "Wooden Bedroom Furniture from the PRC: Separate Rate Certification of Baigou Crafts Factory of Fengkai, and Entry of Appearance," dated April 30, 2012 ("Baigou Crafts' SRC").

⁵⁸ See Silicon Carbide, 59 FR at 22586-87; 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).

⁵⁹ See Baigou Crafts' SRC.

3) *Other Companies*

In addition, four companies that remain under review have failed to provide SRAs or SRCs necessary to establish their eligibility for a separate rate.⁶⁰ The Department has preliminarily determined to treat these companies, namely, the Alexandre Group, Billy Wood, Huanghekou, and Sheng Jing, as part of the PRC-wide entity.

Margins for Separate Rate Recipients Not Individually Examined

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight average the rates for the companies selected for examination excluding zero and de minimis rates and rates based entirely on adverse facts available ("AFA"). In the instant review, however, as discussed above, the Department has not calculated separate rates for the two companies selected as mandatory respondents. Thus, there are no company-specific margins calculated in this review. Additionally, as discussed below, the rate for the PRC-wide entity is based on total AFA.

In such circumstances, the Department has generally looked to section 735(c)(5) of the Act for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs the Department not to calculate an all-others rate using any zero or de minimis margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. Consistent with Department practice, we preliminarily find that a reasonable method for assigning the rate to non-selected respondents is to use the most recent rate calculated for the non-selected company in question, unless we calculated in a more recent review a rate for any company that was not zero, de minimis or based entirely on facts available. Therefore, the Department has preliminarily assigned a rate of 41.75 percent to Foliot/Meubles and the Tony House Group. This rate is the most recently calculated rate that is not zero or de minimis and not based entirely on facts available. This rate was calculated for the mandatory respondent in the 2009 Review.⁶¹

Use of Facts Available and AFA

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the

⁶⁰ The company groupings for the four companies are as follows: (1) Billy Wood Industrial (Dong Guan) Co., Ltd.; Great Union Industrial (Dongguan) Co., Ltd.; Time Faith Ltd. (collectively, "Billy Wood"); (2) Dongying Huanghekou Furniture Industry Co., Ltd. ("Huanghekou"); (3) Sheng Jing Wood Products (Beijing) Co., Ltd.; Telstar Enterprises Ltd. (collectively, "Sheng Jing"); and (4) Alexandre International Corp.; Southern Art Development Ltd.; Alexandre Furniture (Shenzhen) Co., Ltd.; Southern Art Furniture Factory (collectively, "Alexandre Group").

⁶¹ See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729, 49733 (August 11, 2011) ("2009 Review").

deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Total AFA to the PRC-Wide Entity

As noted above, the Department has preliminarily determined that Maoji, Huansheng, and four other companies are not eligible for separate rate status and, consequently, we are treating them as part of the PRC-wide entity. Therefore the PRC-wide entity is under review.

The PRC-wide entity, including Maoji and Huansheng, withheld information requested by the Department and failed to respond within the established deadlines in accordance with sections 776(a)(2)(A) and (B) of the Act. Further, because the PRC-wide entity was unresponsive to our requests for information, we determine that the PRC-wide entity significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

Because the PRC-wide entity, including Maoji and Huansheng, did not respond in full to the Department's antidumping questionnaire or supplemental questionnaires, the Department must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity in accordance with section 776(a) of the Act. Further, the Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation has been shown. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate on the record of the proceeding.⁶² The Court of International Trade ("CIT") and the Court of Appeals for the Federal Circuit ("CAFC") have consistently upheld the Department's

⁶² See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504, 19507 (April 21, 2003).

practice.⁶³ The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁶⁴ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁶⁵

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's commercial activity, selecting the highest prior margin reflects a "common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent's rate to be less."⁶⁶ Consistent with the statute, court precedent, and its normal practice, the Department has assigned as AFA a rate of 216.01 percent to the PRC-wide entity, including Maoji and Huansheng. This is the highest rate on the record of the proceeding, and the rate currently applicable to the PRC-wide entity.⁶⁷

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁶⁸ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.⁶⁹ To corroborate secondary information, the Department will, to the

⁶³ See KYD, Inc. v. United States, 607 F.3d 760, 766-67 (CAFC 2010) ("KYD"); Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990) ("Rhone Poulenc"); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (LTFV) investigation); Kompass Food Trading Int'l v. United States, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

⁶⁴ See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) ("SAA").

⁶⁵ See id.; see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910, 76912 (December 23, 2004), and D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (CAFC 1997).

⁶⁶ See KYD, 607 F.3d at 766 (citing Rhone Poulenc, 899 F.2d at 1190) (original emphasis).

⁶⁷ See NSR Amended Final.

⁶⁸ See SAA.

⁶⁹ See id.

extent practicable, examine the reliability and relevance of the information to be used.⁷⁰ Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁷¹

The Department has corroborated the 216.01 percent rate, the highest rate on the record of any segment of this proceeding applied to the PRC-wide entity. The Department notes that this ad valorem rate was calculated in the 2004-2005 NSR Final⁷² and applied in the final results of every subsequent review as the PRC-wide entity rate. Specifically, to assess the probative value of the total AFA rate selected for the PRC-wide entity in an earlier review, the Department compared this 216.01 percent rate to transaction-specific margins of other respondents. This ad valorem rate was corroborated in previously completed administrative reviews in which the Department found that the 216.01 percent rate for the PRC-wide entity was within “the range of the calculated margins on the record of the {5th} administrative review.”⁷³

Here the Department finds the PRC-wide entity rate to be corroborated. The Department finds this rate to be reliable and relevant, because it (1) constitutes the highest rate from any segment of the proceeding, (2) was applied as the PRC-wide entity rate in the immediately preceding review and has been applied as the PRC-wide entity rate in over five completed reviews, and (3) was corroborated in a prior review using transaction specific margins of the respondents in that review.

⁷⁰ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

⁷¹ See SAA at 870; see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183 (March 11, 2005).

⁷² See 2004-2005 NSR Final at 71 FR 70741.

⁷³ See 5th Review Results at 76 FR 49733; see also Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part, 75 FR 50992, 50997 (August 18, 2010).

CONCLUSION

We recommend applying the above methodology for these preliminary results.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

30 JANUARY 2013
Date