



C-570-971  
Administrative Review  
POR: 1/1/2014 – 12/31/2014  
**Public Document**  
AD/CVD Office VIII

May 9, 2017

MEMORANDUM TO: Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

FROM: Rebecca Trainor  
Acting Office Director, Office VIII  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Final Results and Partial Rescission of  
Countervailing Duty Administrative Review: Multilayered Wood  
Flooring from the People's Republic of China; 2014

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### **Summary**

The Department of Commerce (the Department) has completed this administrative review of the countervailing duty (CVD) order on multilayered wood flooring (MLWF) from the People's Republic of China (PRC), for the period of review (POR) January 1, 2014, through December 31, 2014, in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (Act). The mandatory respondents are Dalian Penghong Floor Products Co., Ltd. and its cross-owned entities Dalian Shumaike Floor Manufacturing Co., Ltd. and Dalian Furui Wood Co., Ltd. (collectively, Penghong); and Fine Furniture (Shanghai) Limited (Fine Furniture) and its cross-owned entity Great Wood (Tonghua) Limited (Great Wood). We find that the mandatory respondents received countervailable subsidies during the POR. There are also 104 companies for which a review was requested but were not selected for individual examination. We are using the mandatory respondents' CVD rates to determine the rate applicable to these non-selected companies. We have analyzed the case and rebuttal briefs submitted by interested parties following the *Preliminary Results*,<sup>1</sup> and address the issues raised in the "Analysis of Comments" section below.

### **Background**

On December 8, 2011, the Department of Commerce (Department) published the CVD *Order* on wood flooring from the PRC.<sup>2</sup> The Department published the *Preliminary Results* of this

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<sup>1</sup> See *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent To Rescind the Review in Part; 2014*, 82 FR 2319 (January 9, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See *Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order*, 76 FR 76693



administrative review in the *Federal Register* on January 9, 2017. We invited interested parties to comment on the *Preliminary Results*. On January 10, 2017, the Department released, and invited comments on, draft cash deposit, liquidation, and partial rescission instructions.<sup>3</sup> On February 8, 2017, we received case briefs from Fine Furniture and the Government of China (GOC).<sup>4</sup> We did not receive case briefs from any other interested party, nor did we receive any rebuttal briefs.

### **List of Interested Party Comments**

Below is a complete list of the issues raised in this administrative review for which we received comments from interested parties. We analyzed these comments in the “Analysis of Comments” section below.

Comment 1: Whether the Provision of Electricity Is Regionally-Specific

Comment 2: Whether the Department Improperly Compared VAT-Inclusive Electricity Benchmarks to VAT-Exclusive Paid Electricity Prices and Whether the Department Should Remove VAT from the Comparison

Comment 3: Whether Fine Furniture’s Electricity Subsidy Rate Was Calculated Correctly

Comment 4: Whether Additional Fees Are Properly Included in the Benchmark Comparison Used in the Electricity for LTAR Program

Comment 5: Whether the Potential Rectification Fund for Safe Production Is Specific

Comment 6: Whether Fine Furniture’s 2010 Sales Value Is Correctly Reflected in the Final Results

Comment 7: Whether the Allowance for Attorney’s Fees Program Is Countervailable

Comment 8: Whether the Patent Application Support Program Is Specific

### **Scope of the Order**

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)<sup>5</sup> 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

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

<sup>3</sup> *See* Memorandum regarding: “Customs Instructions,” dated January 10, 2017.

<sup>4</sup> *See* Letters from Fine Furniture, “Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People’s Republic of China: Case Brief” (Fine Furniture Case Brief), and from the GOC, “Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People’s Republic of China: Case Brief” (GOC Case Brief), dated February 8, 2017.

<sup>5</sup> 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.

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 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; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4140, 4412.31.4160, 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0640, 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 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; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

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

### **Partial Rescission of Administrative Review**

The Department received timely filed no-shipment certifications from six companies. We submitted no-shipment inquiries to U.S. Customs and Border Protection (CBP) on October 26, 2016, and December 12, 2016. We received no information from CBP to contradict the claims of Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., Shenyang Senwang Wooden Industry Co., Ltd., and Jiangsu Yuhui International Trade Co., Ltd. that they had no sales, shipments, or entries of subject merchandise to the United States during the POR.<sup>6</sup> Because these companies timely filed their no-shipment certifications and CBP has not provided information to contradict the companies' claims, we are rescinding the review of these companies, pursuant to 19 CFR 351.213(d)(3).

With respect to Henan Xingwangjia Technology Co., Ltd., Dalian Xinjinghua Wood Co., Ltd., and Xuzhou Antop International Trade Co., Ltd., we determine that there is sufficient evidence on the record of this review to conclude that these companies had reviewable transactions during the POR. On November 4, 2016, we placed on the record, and solicited comments on, CBP entry documentation regarding entries of subject merchandise from these companies during the POR.<sup>7</sup> As we did not receive any comments on this information, we are continuing to include these companies in this administrative review for purposes of the final results.

### **Subsidies Valuation Information**

#### **Allocation Period**

The Department made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*.<sup>8</sup>

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<sup>6</sup> See Memoranda entitled "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2014 Administrative Review of Multilayered Wood Flooring from the People's Republic of China," dated October 26, 2016 and December 12, 2016, stating that the CBP no shipment data query did not identify any entries of subject merchandise.

<sup>7</sup> See Memorandum entitled "U.S. Customs and Border Protection ("CBP") Entry Documents," dated November 4, 2016.

<sup>8</sup> See PDM at 5.

## **Attribution of Subsidies**

The Department made no changes to the attribution methodologies used in the *Preliminary Results* for attributing subsidies.<sup>9</sup>

## **Loan Benchmark Rates**

The Department made no changes to the loan benchmarks and discount rates used in the *Preliminary Results*.<sup>10</sup>

## **Use of Facts Otherwise Available and Adverse Facts Available and Corroboration of Secondary Information**

The Department made no changes to its determinations to apply adverse facts available (AFA) and its corroboration of secondary information regarding the provision of electricity for less than adequate remuneration (LTAR) in the *Preliminary Results*.<sup>11</sup>

## **Programs Determined to Be Countervailable**

Except where noted, the Department has not made changes to its *Preliminary Results* with regard to the methodology used to calculate the subsidy rates for the following programs with regards to Fine Furniture and Penghong. Also, except where noted, no issues were raised by interested parties in case briefs regarding these programs. The final program rates calculated for Penghong and Fine Furniture are as follows:

### **Penghong**

1. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands (Famous Brands): 0.02 percent and 0.04 percent *ad valorem* under the Famous Trade Mark Award of Dalian City and 2012 Famous Brand Award of Liaoning Province programs, respectively.
2. Jinzhou District 2013 New and High Technology Research & Development Plan Industrialization Special Fund: 0.10 percent *ad valorem*.
3. 2005 Enterprise Development Special Funds Awarded to Penghong Wood: 0.02 percent *ad valorem*.
4. Program of 2012 Technology Improvement Project Grant: 0.20 percent *ad valorem*.
5. Potential Danger Rectification Fund for Safe Production: 0.18 percent *ad valorem*.

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<sup>9</sup> *Id.* at 5, 6.

<sup>10</sup> *Id.* at 8-11.

<sup>11</sup> *Id.* at 16-17.

## Fine Furniture

6. Allowance for Attorney's Fees: 0.62 percent *ad valorem*.

## Penghong and Fine Furniture:

7. Provision of Electricity for LTAR: 0.89 percent *ad valorem* for Penghong, and 0.05 percent *ad valorem* for Fine Furniture.

## **Programs Determined Not to Confer Measurable Benefits**

We find that the following program did not confer a measurable benefit during the POR:

1. Patent Application Support

## **Programs Determined Not to Be Used**

We find that the respondents did not use the following programs:

1. Income Tax Subsidies for Foreign-Invested Enterprises (FIEs) Based on Geographic Location
2. Two Free, Three Half Program<sup>12</sup>
3. Value-Added Tax and Tariff Exemptions on Imported Equipment
4. Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County
5. International Market Development Fund Grants for Small and Medium Enterprises
6. Minhang District Little Giant Enterprise Support
7. Minhang District Pujiang Town Enterprise Support
8. Technology Innovation Support
9. Support for Developing a National Technology Standard

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<sup>12</sup> The Department previously evaluated this program under 19 CFR 351.526 and made a program-wide change determination that this program was terminated as of January 1, 2014. *See, e.g., Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, In Part*, 80 FR 34888 (June 18, 2015), and accompanying Issues and Decision Memorandum (IDM) at 32-33 and Comment 15. Therefore, we will no longer include this program in any subsequent administrative reviews.

10. Jinzhou New District 2012 Technology Innovation Award
11. Technical Innovation Fund from Linyi Bureau of Finance
12. Local Income Tax Exemption and Reductions for “Productive” FIEs
13. Provision of Electricity at LTAR for FIEs and “Technology Advanced” Enterprises by Jiangsu Province
14. Program of Loan Interest Discount
15. Program of Provincial Famous Brand and New Product
16. Program of VAT Refunds for Production and Processing Comprehensive Utilization Products by Using Three Leftover Materials and Down-Graded Small Woods
17. Party Members’ Activities Fund

#### **Ad Valorem Rate for Non-Selected Companies Under Review**

The Act and the Department’s regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, the Department normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that “the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all others rate under section {705(c)(5) of the Act}.” Section 705(c)(5)(A) of the Act instructs the Department to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis*, or facts available rates. In this review, the final subsidy rates calculated for the two mandatory respondents are above *de minimis* and neither was determined entirely under facts available.

Calculating the non-selected rate by weight-averaging the rates of the respondents, using respondents’ proprietary sales, however, risks disclosure of this proprietary information. Therefore, for these final results, we assigned to the non-selected respondents the simple average of the rates calculated for Fine Furniture and Penghong.<sup>13</sup> Accordingly, for each of the 104 companies for which a review was requested and not rescinded, but which was not selected as a mandatory respondent and did not fail to cooperate, we derived a final subsidy rate of 1.06 percent *ad valorem*.<sup>14</sup>

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<sup>13</sup> See Memorandum to The File entitled, “Calculation of the Non-Selected Rate for the Final Results of Review; 2014,” dated concurrently with this notice.

<sup>14</sup> For a list of the non-selected companies, see *Federal Register* notice which this memorandum accompanies.

## Analysis of Comments

### **Comment 1: Whether the Provision of Electricity Is Regionally-Specific**

#### *Fine Furniture Case Brief*

- The Department incorrectly determined in the preliminary results that the provision of electricity for LTAR is regionally specific, as there is information on the record regarding the reasons for differences in electricity rates between different provinces. The Department only requested original Provincial Price Proposals for provinces where the mandatory respondents were located. The GOC did not refuse to answer any questions regarding regional differences in electricity rates.
- The provision of electricity is, by definition, a domestic subsidy, as electricity cannot be exported/imported. However, the Department has not made the necessary findings to classify a domestic subsidy as specific under section 771(5A)(D) of the Act.
- The Department did not cite to the record for support that electricity rates differ for users or industries within the regions in order to properly conclude that a domestically-available benefit is regionally specific.
- The Department's *de facto* finding of regional specificity is not consistent with the Agreement on Subsidies and Countervailing Duty Measures which states at Article 2.2 that "...the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy..."). The GOC did not fail to respond to questions regarding whether the rates were generally applicable within provinces.

#### **Department Position:**

The Department disagrees with Fine Furniture's arguments. As discussed in the *Preliminary Results*, in the underlying investigation of this *Order*, the GOC did not provide requested original price proposals necessary for our analysis of this program, and we, therefore, determined that the program was specific within the meaning of 771(5A) of the Act by applying an adverse inference pursuant to section 776(b) of the Act.<sup>15</sup> That is, we applied AFA in determining that the program was specific. In the instant review, the GOC similarly did not provide original price proposals as requested by the Department and, therefore, we reached the same finding as in the underlying investigation. Moreover, as we noted in the *Preliminary Results*,<sup>16</sup>

In the current administrative review, the GOC has not provided the above-referenced price proposals and, instead, reported that "Proposals of this kind are drafted by the provincial governments and submitted to the NDRC. They are working documents for the NDRC's review only. The GOC is therefore unable to provide them with this response."<sup>17</sup>

As no new information has been presented in this administrative review warranting reconsideration of the Department's investigation finding, and because the GOC continues to withhold the requested documentation, we continue to find that the GOC's

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<sup>15</sup> See PDM at 16 – 17.

<sup>16</sup> See PDM at 17.

<sup>17</sup> See GOC's September 22, 2016, Initial Questionnaire Response (GOC September 22, 2016 IQR) at 10.

provision of electricity is countervailable on the same bases as in the underlying investigation. Further, in the first administrative review following the investigation, the Department clarified its finding, based in part on facts available, that this program is regionally specific within the meaning of 771(5A)(D)(iv), consistent with similar findings regarding the program in other investigations, also based in part on facts available.<sup>18</sup>

In addition, as noted in the *First Administrative Review*, the Federal Circuit addressed this issue in *Fine Furniture CAFC*:<sup>19</sup>

Fine Furniture is a company within the country of China, benefitting directly from subsidies the {GOC} may be providing, even if not intending to use such subsidy for anticompetitive purposes. Therefore, a remedy that collaterally reaches Fine Furniture has the potential to encourage the {GOC} to cooperate so as not to hurt its overall industry. Unlike in *SKF*, Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the {GOC's} failure to cooperate. (citations omitted)

Additionally, the Federal Circuit noted that:

{T}he purpose of {section 776}(b), according to the {SAA}, which ‘shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the URAA,’ 19 U.S.C. 3512(d), is to encourage future cooperation by ‘ensur{ing} that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.’ Additionally, by authorizing Commerce to provide a reasonable estimate based on the best facts available, accompanied by a reasonable adverse inference used in place of missing information, this statute provides a mechanism for remedying sales at less than fair value to aid in the protection of U.S. industry...<sup>20</sup>

Therefore, in making our determination of regional specificity, we find that it is inappropriate to rely on the responses submitted by the GOC because it has declined to provide all the requested information. Instead, we continue to find specificity on the basis of AFA.

Accordingly, as AFA, we compared the highest electricity rates available on the case record for the appropriate user category to respondents’ electricity prices.<sup>21</sup> In accordance with 19 CFR

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<sup>18</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2011*, 79 FR 45178 (August 4, 2014), and accompanying IDM at Comment 3 (*First Administrative Review*).

<sup>19</sup> See *Fine Furniture (Shanghai) Limited v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014) (*Fine Furniture CAFC*); *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276.

<sup>20</sup> See *Fine Furniture CAFC*, 748 F.3d at 1373. Original footnotes omitted.

<sup>21</sup> See, e.g., *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at “Provision of Electricity for LTAR”; *Drill Pipe from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 47275 (August 5, 2013), and accompanying IDM at “Provision of Electricity for LTAR”; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying IDM at “Provision of Electricity.”

351.511(a)(2), we selected the highest non-seasonal provincial rates in the PRC for each user category (e.g., “general,” “industry,” and “commerce”) and voltage class of the respondents (e.g., 1-10 kilovolts), as well as the respondents’ “base charge” (maximum demand and/or transformer capacity). We used these rates as our benchmarks to compare with the corresponding rates that the respondent companies actually paid during 2014. In this manner, we have used the actual usage information supplied by the respondent companies to measure the benefit.

## **Comment 2: Whether the Department Improperly Compared VAT-Inclusive Electricity Benchmarks to VAT-Exclusive Paid Electricity Prices and Whether the Department Should Remove VAT from the Comparison**

### *Fine Furniture Case Brief*

- As requested by the Department, Fine Furniture reported value-added tax (VAT)-exclusive electricity payments. The GOC reported VAT-inclusive prices which the Department used as benchmarks for the *Preliminary Results*. In accordance with Department precedent, the Department should adjust its comparison to facilitate an “apples to apples” comparison by removing the 17 percent VAT from the electricity benchmark.
- It is “more appropriate” to reduce the electricity benchmarks by 17 percent, versus increasing the prices Fine Furniture paid by 17 percent, because the addition of VAT is not an allowable adjustment under the Department’s regulations and distorts the comparison to the purchase price.

### **Department Position:**

We agree with Fine Furniture that, for the final determination, the Department should adjust its benefit calculation to ensure an “apples-to-apples” comparison.<sup>22</sup> However, we disagree with Fine Furniture that we should make the comparison by removing VAT from the benchmark price. Consistent with our past practice, for the final results, we are adjusting Fine Furniture’s reported electricity purchases to include the 17 percent VAT rather than excluding VAT from the benchmark prices.<sup>23</sup>

Pursuant to 19 CFR 351.511(a)(2)(iv), Commerce’s tier one and tier two benchmark prices must be adjusted “to reflect the price a firm actually paid or would pay if it imported the product,” including amounts for “delivery charges and import duties.” The CIT has held that Commerce “properly observed its regulations and adjusted the benchmark price for {respondents’ inputs} to account for the VAT and import duties that firms located in the PRC, which purchased {said inputs}, would ordinarily have paid.”<sup>24</sup> Here, Fine Furniture is located in the PRC, and reported that it pays VAT on the purchases of its electricity, and our benchmark price includes VAT.

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<sup>22</sup> See *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying IDM at Comment 8; *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People’s Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016), and accompanying IDM at Comment 8; and *1,1,1,2 Tetrafluoroethane (R-134a) from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017), and accompanying IDM at Comment 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1375 (Ct. Int’l Trade 2015).

Therefore, excluding VAT from Fine Furniture’s electricity payments would not yield an “apples-to-apples” comparison with the electricity benchmark. Accordingly, we are including the VAT actually paid by Fine Furniture on its electricity purchases.

### **Comment 3: Whether Fine Furniture’s Electricity Subsidy Rate Was Calculated Correctly**

#### *Fine Furniture Case Brief*

- In calculating the subsidy rate for Great Wood, the Department used only Great Wood’s sales as the denominator, rather than the combined sales of Great Wood and Fine Furniture.
- Section 351.525(b)(6)(iv) of the Department’s regulations requires the Department to use the combined sales of input and downstream products produced by both cross-owned companies (excluding intercompany sales).

#### **Department Position:**

We agree with Fine Furniture that the denominator for subsidies received by Great Wood should be the combined sales of Great Wood and Fine Furniture, less intercompany sales. Accordingly, for the final determination, we have corrected the denominator used in the electricity subsidy rate calculation for Great Wood.<sup>25</sup>

### **Comment 4: Whether Additional Fees Are Properly Included in the Benchmark Comparison Used in the Electricity for LTAR Program**

#### *Fine Furniture Case Brief*

- Great Wood included “Additional Fees” (*i.e.*, surcharges) in the electricity worksheet it submitted in its initial questionnaire response. Further, the benchmark prices used in calculating the subsidy rate for Great Wood also include additional fees. However, the Department did not include these additional fees reported by Great Wood in its electricity calculation.
- The Department is obligated to ensure an “apples-to-apples” comparison to avoid a distorted benefit calculation. Therefore, the Department must increase the rates paid by Great Wood to include the reported surcharges.

#### **Department Position:**

We agree with Fine Furniture that the published electricity rates for Zhejiang Province (*i.e.*, the benchmark rates used by the Department in calculating the electricity for LTAR subsidy rate in the *Preliminary Results*), and the published rates for Jilin Province, where Great Wood is located, both include certain surcharges which the Department did not properly account for in its preliminary results calculation.<sup>26</sup> However, we find that the surcharges reported in Great Wood’s electricity worksheet are not consistent with the supporting documentation submitted by

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<sup>25</sup> Memorandum to the File, “Final Results Calculation Memorandum for Fine Furniture (Shanghai) Limited and Great Wood (Tonghua) Ltd.,” dated concurrently with this memorandum (Fine Furniture’s Final Results Calculation Memorandum).

<sup>26</sup> See Memorandum entitled “Preliminary Results Calculation Memorandum for Dalian Penghong Floor Products,” dated December 30, 2016.

Fine Furniture or the GOC.<sup>27</sup> Accordingly, in order to calculate the electricity for LTAR subsidy rate for the final results in a manner that allows for an accurate comparison between the actual price paid by Great Wood and the benchmark rate, and is consistent with record evidence, we are increasing the electricity rates paid by Great Wood by the surcharge amount listed in the Jilin Province electricity rate schedule of 0.053 RMB.<sup>28</sup>

### **Comment 5: Whether the Potential Rectification Fund for Safe Production Program Is Specific**

#### *GOC Case Brief*

- In the *Preliminary Results*, the Department incorrectly cited to portions of the GOC’s response which did not address the issue of regional specificity.
- The GOC asserts that it stated “no” in its supplemental response to the Department’s question concerning whether eligibility was limited to enterprises or industries within designated geographical regions.<sup>29</sup>

#### **Department Position:**

We disagree with the GOC’s argument that the Potential Danger Rectification Fund for Safe Production is not regionally specific. The Department’s practice is to treat financial contributions and benefits as specific when the grant is limited to companies located within a designated geographical region within the jurisdiction of the granting authority.<sup>30</sup>

Notwithstanding the GOC’s narrative response, we find that the law governing the program, entitled the “Interim Measure for Administration of Special Fund of Work Safety,” which the GOC itself provided, indicates such limitation on the provision of program funds. In particular, this law states that this program is,

To strengthen supervision and regulation of field safety in production in the New District thereby to safeguard life and property of the people, pursuant to the Decision of Dalian in relation to strengthening field safety in production, the Jinzhou New District Special Fund of Work Safety is hereby established. To regulate usage and operation of the fund, this interim measure is promulgated according to the Dalian Interim Measure for Administration of Special Fund of Work Safety.<sup>31</sup>

Thus, we find that the law supports a finding that the municipality of Dalian has authority over this program, which benefits enterprises located in Jinzhou New District, a designated area within Dalian. Therefore, this program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.

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<sup>27</sup> See Fine Furniture’s September 22, 2016 Initial Questionnaire Response (Fine Furniture September 22, 2016 IQR) at Exhibit 8. Additionally, because the specific nature of these inconsistencies is business proprietary in nature, for further discussion, see Fine Furniture’s Final Results Calculation Memorandum.

<sup>28</sup> See GOC September 22, 2016 IQR at Exhibit 6.

<sup>29</sup> See GOC’s November 9, 2016 Third Supplemental Questionnaire Response (GOC November 9, 2016 SQR) at 6.

<sup>30</sup> See, e.g., *Certain Pasta from Italy: Final Results of the 2009 Countervailing Duty Administrative Review*, 77 FR 7129 (February 10, 2012), and accompanying IDM at 11.

<sup>31</sup> See GOC November 9, 2016 SQR at Article 1 of Exhibit 2.

## **Comment 6: Whether Fine Furniture's 2010 Sales Value Is Correctly Reflected in the Final Results**

### *Fine Furniture Case Brief*

- The Department used the improper sales value for Fine Furniture's sales in 2010.
- Sales from 2010 are not used in the calculation of any subsidy program, but the record should nonetheless be accurate.

### **Department Position:**

We agree with Fine Furniture that the correct 2010 sales value reported was submitted by Fine Furniture in its initial questionnaire response and have updated the record for these final results accordingly.<sup>32</sup> However, as noted by Fine Furniture, there is no measurable difference to Fine Furniture's net subsidy rate because these sales values are not used in the calculation of any subsidy rates for these final results.

## **Comment 7: Whether the Allowance for Attorney's Fees Program Is Countervailable**

### *Fine Furniture Case Brief*

- In antidumping proceedings, the Department does not subtract, from U.S. price, legal fees (and other expenses) associated with participation in antidumping duty (AD) proceedings, as these fees are incurred as a result of the antidumping duty order.
- As in an AD proceeding, the legal fees subsidized under this program are also incurred as the result of the existence of the CVD *Order* on MLWF from the PRC and, therefore, the Department should not review this program.
- The Department's treatment of this program as a countervailable subsidy creates the need for more government assistance for participation in CVD proceedings and is, therefore, circular logic, *i.e.*, the subsidy exists because of the Department's imposition of countervailing duties.

### **Department Position:**

Fine Furniture's argument with respect to the Allowance for Attorney's Fees program conflates the Department's practices in AD and CVD proceedings. The Department's treatment of attorney's fees within the context of an AD proceeding is not analogous to, and has no bearing on, our treatment of a government grant to cover those fees in a CVD proceeding. These are separate proceedings that provide separate remedies for distinct unfair trade practices, and each is governed by separate provisions of the Act and regulations. Accordingly, the Department's analyses are tailored to remedy the unfair trade practice under review. Antidumping duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. The Department's AD practice is not to adjust U.S. prices or a respondent's cost of production to account for attorney's fees that the company incurs because those fees are not business expenses that arise from the ordinary course of economic activities. This practice solely pertains to determining the correct price of the company's goods for AD calculations, and it is irrelevant to findings on the CVD side as to whether a government grant provided to cover those fees constitutes a subsidy under the Act and the Department's regulations. As we fully

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<sup>32</sup> See Fine Furniture September 22, 2016 IQR at page 2 of Exhibit 6A.

explained in the *Preliminary Results*, this grant satisfies all of the elements to find a subsidy countervailable within the meaning of sections 771(5)(D)(i) and 771(5A)(B) of the Act.<sup>33</sup> The reason for which the GOC provided the countervailable subsidy is irrelevant, and the Department has consistently treated similar grants for legal fees to be countervailable.<sup>34</sup> Fine Furniture does not contest that it was reimbursed for its attorney's fees in the form of this grant. Therefore, for the final results, we are not amending our countervailability finding as to this program.

### **Comment 8: Whether the Patent Application Support Program Is Specific**

#### *GOC Case Brief*

- The Department found this program to be non-measurable in the *Preliminary Results*; however, the determination of the existence and amount of benefit are distinct from the concept of specificity. Therefore, the Department should analyze whether the program is *de jure* or *de facto* specific.
- Record evidence demonstrates that this program is not specific, and in making such a finding, the Department would eliminate this program from future examination, which would avoid a further waste of resources for all parties.

#### **Department position:**

We agree with the GOC that the statute requires that a subsidy must involve a financial contribution by an authority, confer a benefit, and be specific in order to find that a subsidy is countervailable, and that the existence and amount of benefits are a distinct legal concept from the concept of specificity.<sup>35</sup> However, where the Department determines that a program does not confer a measurable benefit, the issues of financial contribution and specificity become moot, and devoting additional resources to address those issues becomes unnecessary to the Department's core task of determining a subsidy rate.<sup>36</sup> In this review, we determined that the benefit that Fine Furniture received for this program was not measurable.<sup>37</sup> Accordingly, the Department is not required to make a specificity determination as argued by the GOC. Moreover, with regard to the future examination of this program, the Department examines programs based on the record of the instant segment of the proceeding, not based on the potential use, non-use, or measurability of the program in future segments.

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<sup>33</sup> See *Preliminary Results* at 15.

<sup>34</sup> See *Melamine from the People's Republic of China, Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 21706 (April 20, 2015), and accompanying Preliminary Decision Memorandum at 24; *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), and accompanying Preliminary Decision Memorandum.

<sup>35</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>36</sup> See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at 15; and *Large Residential Washers from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 77 FR 33181 (June 5, 2012), and accompanying Decision Memorandum at 10, unchanged in *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975, (December 26, 2012)).

<sup>37</sup> See *Preliminary Results* at 17 and 18.

**Conclusion**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

5/9/2017

X



Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations