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DATE: June 5, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Wooden Bedroom Furniture from the People's Republic of China: Issues and Decision Memorandum for the Final Results of Review

SUMMARY

The Department of Commerce ("the Department") analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced review. As a result of our analysis, we made no changes to our preliminary results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On February 6, 2013, the Department published in the Federal Register the Preliminary Results of the administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China.[1] We invited parties to comment on our Preliminary Results. On March 8, 2013, Mark David USA ("Mark David") and Restoration Hardware ("Restoration Hardware"), importers of subject merchandise, and the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. ("Petitioners") filed case briefs with the Department. In addition, on March 8, 2013, we received a request for a hearing from Petitioners. On March 13, 2013, Bryan Ashley International, Metropolis Manufacturing, Inc. and MGM Resorts International Design (collectively, "Bryan Ashley"), importers of subject merchandise, and Petitioners filed rebuttal briefs with the Department. On March 25, 2013, Ashley Furniture Industries, Inc. ("Ashley"), a domestic producer, filed rebuttal briefs with the Department. On April 18, 2013, Petitioners withdrew their request for a hearing.

[1] See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011, 78 FR 8493 (February 6, 2013) ("Preliminary Results").

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 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,[2] highboys,[3] lowboys,[4] chests of drawers,[5] chests,[6] door chests,[7] chiffoniers,[8] hutches,[9] and armoires;[10] (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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[2] 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.

[3] 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).

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

[5] A chest of drawers is typically a case containing drawers for storing clothing.

[6] 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.

[7] 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.

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

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

[10] 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.

hang over the dresser; (5) chests-on-chests,[11] highboys,[12] lowboys,[13] chests of drawers,[14] chests,[15] door chests,[16] chiffoniers,[17] hutches,[18] and armoires;[19] (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.

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;[20] (9) jewelry armories;[21] (10) cheval mirrors;[22]

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[20] 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.

[21] 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 ("I&D 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).

[22] 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

(11) certain metal parts;[23] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a 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 beds[24] and (14) toy boxes.[25]

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.

DISCUSSION OF THE ISSUES:

Comment 1: Whether Maoji has Demonstrated Eligibility for Separate Rate Status

Importers

- Even though Shanghai Maoji Import and Export Corp. ("Maoji") did not respond to all sections of the Department's questionnaire (specifically section D), it is entitled to

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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).

[23] 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.

[24] 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).

[25] 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.

separate-rate status because: (1) it had a separate rate coming into the review and timely filed a separate rate certification in this review; (2) it demonstrated an absence of de facto and de jure government control and there is no indication its claims regarding the absence of control are false[26]; (3) the fact that it was selected as a mandatory respondent suggests a presumption of no state control; and (4) its inability to obtain factors of production ("FOP") information from its suppliers has no bearing on its separate-rate status.

- The Department improperly informed mandatory respondents that they would not be granted separate-rate status if they failed to fully answer the questionnaire. The Department may not confer upon itself an advance waiver of its obligation to base its separate-rate determinations on record evidence. The Department cannot conflate separate-rate status and application of an adverse facts available ("AFA") rate due to missing or unverified sales or FOP data. The Court of International Trade ("CIT") has recognized this in several cases.[27]

Petitioners

- Because Maoji failed to rebut the presumption of government control in this review, the Department should continue to deny Maoji a separate rate in the final results. Maoji's separate-rate certification is incomplete because the Department had outstanding questions regarding Maoji's separate rate eligibility. Maoji has not established an absence of de jure or de facto government control. The Department has denied separate-rate status for mandatory respondents that have failed to participate,[28] and the Department should continue to deny Maoji's separate rate for the final results.
- In Shandong Huarong, the CIT determined that the respondent was eligible for a separate rate because the Department had not requested any additional information necessary to determine its separate-rate eligibility. Here, the Department is denying Maoji separate rate-status, because it did not respond to questions necessary to determine its separate-rate eligibility.

[26] See Jiangsu Changbao Steel Tube Co., Ltd. v. United States, 700 F. Supp. 2d 1361 (CIT 2010) ("Changbao"). The instant situation is unlike that in Changbao where the Department found that the respondent had falsified information in its responses during verification and denied the company a separate rate.

[27] See Shandong Huarong Gen. Grp. Corp. v. United States, 27, CIT 1568,1594-95 (CIT 2003) ("Shandong Huarong") where the CIT found that it was unjustified to treat Shandong Huarong as part of the PRC-wide entity, because there was no evidence that its separate rate information was inaccurate, even though the Department applied AFA to its sales and FOP reporting.; Lifestyle Enter., Inc. v. United States, 768 F. Supp. 2d 1286 (CIT 2011) ("Lifestyle I") where Orient International Holding Shanghai Foreign Trade Co., Ltd. ("Orient") did not fail to provide information with regards to its separate rate eligibility, and Orient received a separate rate although it did not provide responses to Sections C and D of the Department's antidumping duty questionnaire.

[28] See, e.g., Fresh Garlic from the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009-2010 Administrative Review, 76 FR 65172, 65174 (October 20, 2011), unchanged in Fresh Garlic From the People's Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review, 77 FR 11486, 11487 (February 27, 2012); Fresh Garlic from the People's Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review, 75 FR 80458, 80465 (December 22, 2010), unchanged in Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 37321 (June 27, 2011).

Department's Position

After examining Maoji's separate-rate certification and Section A response, the Department issued supplemental questions to Maoji relating to its claims of the absence of de jure and de facto government control over its export activities.[29] Those questions involved Maoji's business license, its ownership structure, its claim that it had no relationship with national, provincial, or local governments, and the involvement of the government in setting its export prices.

One of the criteria for establishing an absence of de jure government control is the absence of restrictive stipulations associated with an individual exporter's business and export licenses.[30] In its Section A response, Maoji provided a business license that was valid for only two days during the period of review ("POR"). In its supplemental questionnaire, the Department requested that Maoji provide a copy of the business license which covered the remainder of the POR. Maoji did not provide the license or any explanation in response to the Department's request because it ceased participating in the review, and the Department could not, in any case, verify information regarding Maoji's separate-rate status. Therefore, the Department was prevented from examining the business license which covered almost the entire POR to determine whether there were restrictive stipulations associated with the license.

In addition, some of the supplemental questions involved apparent discrepancies in record information regarding ownership structure and government involvement with the company. Several of the criteria for establishing the absence of de facto government control relate to government involvement in setting export prices and selection of management.[31] Thus it is important for the Department to understand the level of government involvement with the company. In its Section A response, Maoji stated that it had no relationship with the national, provincial, or local governments. However, information in Maoji's 2010 and 2011 financial statements raised questions as to whether there was some form of government involvement with the company.[32] To resolve this matter, the Department requested additional information about Maoji's relationship with the government, if any. Further, the Department specifically asked Maoji to explain whether its business licensing process involved any government participation in the setting of export prices. Maoji did not respond to the Department's questions because it ceased participating in the review. Thus, Maoji did not provided necessary information for determining whether there was an absence of de jure and de facto government control over its export activities under the criteria established in Sparklers and Silica Carbide. Finally, the fact

[29] Letter from the Department to Shanghai Maoji Import & Export Co., Ltd., Re: Section A Supplemental Questionnaire in the 2011 Administrative Review of Wooden Bedroom Furniture from the People's Republic of China, dated July 24, 2012 ("Section A Supplemental").
[30] 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"), as amplified by 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) ("Silica Carbide"); see also 19 CFR 351.107(d).
[31] See Sparklers; see also Silica Carbide.
[32] This information is proprietary. For details regarding this proprietary information, see memorandum from Patrick O'Connor, International Trade Compliance Analyst to the File Re: "Proprietary Information Relating to Issues in the June 5, 2013, Issues and Decision Memorandum," dated concurrently with this memorandum ("BPI Memorandum") at Note 1.

that Maoji stopped participating in the review meant the Department could not verify any of the information placed on the record by Maoji, rendering it unreliable.

When Maoji ceased participating in the proceeding, it noted that it was not practicable for it to continue with the review and respond to Section D of the questionnaire and the supplemental Section A questionnaire because its suppliers were uncooperative. Even though Maoji claimed that its suppliers were uncooperative, the separate-rate questions in the Department's supplemental Section A questionnaire pertained specifically to Maoji, not its suppliers, and Maoji was solely responsible for providing evidence demonstrating the absence of de jure and de facto government control over its export operations. However, as noted above, Maoji did not respond to any of the separate-rate questions in the supplemental Section A questionnaire, including those regarding its business license, ownership structure, and relationship with the government. Answers to these questions are integral to determining separate-rate eligibility. Despite Maoji's separate-rate certification and response to section A of the questionnaire, there is not enough information on the record to determine whether Maoji's export activities were free from government control. Therefore, Maoji did not establish that it was entitled to separate-rate status.

Although importers have claimed the fact that Maoji was selected as a mandatory respondent suggests a presumption of no state control, this is not correct. In proceedings involving non-market economy ("NME") countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[33] Because a company's corporate structure, ownership, or relationship with the government can change from one segment of a proceeding to the next, the Department requires companies to establish their separate-rate eligibility in each segment of a proceeding. In the instant review, although Maoji responded that its corporate structure had not changed in its separate-rate certification, the business license it provided in its Section A response was only valid for two days during the POR. Moreover, the 2010 and 2011 financial statements for Maoji contain conflicting information regarding the company's ownership structure and raise questions as to whether the company's ownership structure had changed.[34] Thus, it was necessary for Maoji to answer the additional questions regarding its separate-rate eligibility in this review, which it did not do.

Further, mandatory respondents may not dictate their level of participation for the purposes of determining a more favorable separate rate based on another party's data. After providing separate rate information, a mandatory respondent could cease participating in a proceeding by not responding to section C or D or the antidumping questionnaire, believing that its own data may result in a higher antidumping duty margin than if it simply participated as a separate-rate respondent. Thus, the Department instituted a practice that a respondent must respond to all information that has been requested by the Department and not selectively choose which requests to respond to or which information to submit. Consistent with that practice, in the initiation notice for this review the Department stated:

[33] See Sparklers, as amplified by Silica Carbide; see also 19 CFR 351.107(d).
[34] See Section A Supplemental at question 6.

> For exporters and producers who submit a separate rate application or separate-rate 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.

Maoji cannot participate in one aspect of the review, while simultaneously failing to provide complete, accurate and verifiable data with respect to other required elements of that review.[35]

Although importers cite a number of cases which purportedly support the granting of separate rates to respondents that have failed to respond to all sections of the questionnaire, the facts in this review are different than the facts in the cases cited. In Shandong Huarong, the Department granted the mandatory respondent a separate rate because the respondent's separate-rate certification was complete and the Department verified the respondent's separate-rate status. In this review, however, the information that Maoji submitted regarding its separate-rate eligibility is incomplete. Maoji has not responded to questions fundamental to determining its separate-rate eligibility, and because Maoji ceased participating in the review, the Department was unable to verify Maoji's responses pertaining to its separate-rate status. In addition, in the Lifestyle cases, the Department found that Orient International Holding Shanghai Foreign Trade Co., Ltd. had established its separate rate eligibility, but applied AFA to its POR exports because it failed to provide responses to Sections C and D of the Department's questionnaire. As noted above, in addition to not responding to all parts of the questionnaire, Maoji did not respond to additional questions regarding its separate-rate eligibility.[36]

Comment 2: The Appropriate Dumping Margin to Apply to Maoji as Part of the PRC-Wide Entity

Importers

- The 216.01 percent margin that was assigned to Maoji as part of the PRC-wide entity is inappropriate because it is a punitive rate that does not reflect Maoji's commercial reality, is not supported by substantial evidence, is not corroborated by the much lower margins in recent reviews, and was invalidated by the CIT.
- In Lifestyle III,[37] the CIT ruled that the 216.01 percent AFA rate did not reflect the respondent's commercial reality and it required the Department to explain and support

[35] See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China, 72 FR 46957 (August 22, 2007) ("WBF Amended Final"), and accompanying I&D Memorandum at Comment 43 where the Department established the requirement to inform all parties that failure to respond to all sections of the Department's questionnaire would result in the loss of a respondent's separate rate.

[36] See, e.g., 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission in Part, 76 FR48142 (August 8, 2011), and accompanying I&D Memorandum at Comment 2 where the Department determined that the mandatory respondent had failed to demonstrate its eligibility for a separate rate because the respondent prevented the Department from investigating absence of de jure and de facto government control although the respondent had responded to all sections of the Department's questionnaire.

[37] See Lifestyle Enter., Inc. v. United States, 865 F. Supp. 2d 1284 (CIT 2012) ("Lifestyle III").

the selected rate given that it represented a 3,000 percent increase over the respondent's current cash deposit rate of 7.28 percent. On remand, the Department applied a new AFA rate of 83.55 percent.
- Here, the Department has not provided an explanation or support for its application of a 216.01 percent rate to Maoji, which had a cash deposit rate of 6.68 percent.
- Maoji must be assigned a lower, corroborated margin such as the 83.55 percent upheld by the CIT.

Petitioners

- The 216.01 percent rate is appropriate because it has been corroborated for the PRC-wide entity as recently as the 2009 review and no party has submitted evidence challenging the corroboration of the AFA rate. The Department is not applying the 216.01 percent rate to Maoji as AFA; rather, it is applying the rate to the PRC-wide entity, which includes Maoji.
- Lifestyle III did not invalidate the 216.01 percent rate for the PRC-wide entity; rather the rate was not upheld as a separate AFA rate for a particular respondent. Even if the Department determines that Maoji is entitled to separate-rate status and applies an AFA rate to Maoji, the 83.55 percent rate from Lifestyle III should not be applied because it was based on the facts in the review underlying that litigation and cannot be recreated based on the facts of this review.
- Calculating dumping margins for Maoji's U.S. sales using current surrogate values and FOP data from the 2009 review yields an average dumping margin of 173 percent, with 1,900 sales transactions at a margin higher than 216.01 percent. This corroborates the 216.01 percent margin.

Department's Position

After determining that it was appropriate to base the PRC-wide entity's dumping margin on AFA (a determination not challenged by interested parties), we followed Departmental practice and selected, as AFA, the highest corroborated rate determined in any segment of the proceeding, 216.01 percent.[38]

The Department has applied the 216.01 percent rate to the PRC-wide entity in several other segments of this proceeding.[39] The 216.01 percent rate is a calculated rate, based on the

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[38] See, e.g., Fresh Garlic from the People's Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review, 77 FR 11486 (February 27, 2012) ("Garlic") and accompanying I&D Memorandum at Comment 1 where the Department relied upon the PRC-wide rate that was corroborated in a prior administrative review.

[39] See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 77 FR 51754 (August 27, 2012); Wooden Bedroom Furniture from the People's Republic of China: Final Results Rescission in Part, 76 FR 49729 (August 11, 2011) ("WBF 2009 Final"); Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 10, 2010); Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41373 (August 17, 2009); Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008).

information provided by a new shipper during the 2004-2005 semi-annual new shipper review.[40] Because the 216.01 percent calculated rate exceeded the previously-applied PRC-wide rate, the Department adopted it as the PRC-wide rate in all reviews since 2006. Given the Department's longstanding practice of applying the PRC-wide rate to companies that fail to demonstrate their eligibility for separate rate status, Maoji should have known that the PRC-wide rate would be applied to its exports of subject merchandise if it did not demonstrate its separate rate eligibility. Nonetheless, Maoji chose not to participate and failed to demonstrate its independence from the government, as explained above.[41] Therefore, Maoji is now considered part of the PRC-wide entity and the 216.01 percent rate applies.

There is no need for the 216.01 percent rate to reflect Maoji's "commercial reality" because the Department did not separately assign the rate to Maoji but assigned the rate to the PRC-wide entity which is made up of multiple exporters. The issue of Maoji's "commercial reality" applies in the context of selecting an AFA rate specifically for Maoji, which is not being done here.[42] The CIT held that the Department "has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate."[43] Thus, the Department does not need to determine whether the 216.01 percent rate is reliable and relevant with respect to Maoji in particular. Further, the CIT noted that the PRC-wide "rate must only be generally corroborated as to the PRC-wide entity."[44]

Although importers question the 216.01 percent rate based on the final weighted-average dumping margins calculated for mandatory respondents in recent reviews, the 216.01 percent rate has been corroborated with respect to the PRC-wide entity. As recently as the 2009 administrative review of this proceeding, the Department corroborated the 216.01 percent rate for the PRC-wide entity using transaction-specific margins of the mandatory respondent. In the 2009 administrative review the Department noted that "{s}ince the 216.01 percent margin is within the range of transaction-specific margins on the record of this administrative review, the Department has determined that the 216.01 percent margin continues to be relevant for use as an AFA rate for the PRC-wide entity in this administrative review."[45] Because the 216.01 percent rate has been corroborated for the PRC-wide entity, and there is no evidence specific to this review that calls into question the prior corroboration for the PRC-wide entity, there is no need to corroborate it here.[46]

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[40] 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 (December 6, 2006).
[41] See KYD, Inc. v. United States, 607 F.3d 760, 767 (upholding the Department's "presumption that a prior dumping margin imposed against an exporter in an earlier administrative review continues to be valid if the exporter fails to cooperate in a subsequent administrative review").
[42] See Watanabe Group v. United States, 2010 CIT LEXIS 144 *15 (CIT December 22, 2010) ("Watanabe") ("Here, Gallant does not apply in the manner asserted by Watanabe because Commerce has determined Watanbe to be part of the PRC-wide entity and therefore Watanabe has not received a separate AFA rate.").
[43] See Watanabe, 2010 CIT LEXIS 144 *14 (stating that when a respondent is part of the PRC-wide entity, inquiring into its "separate sales behavior ceases to be meaningful"); see also Peer Bearing Co. – Changshan v. United States, 587 F. Supp.2d 1317, 1327 (CIT 2008) ("Peer Bearing") (stating that Commerce has no obligation to corroborate the PRC-wide rate for a mandatory respondent that does not qualify for a separate rate).
[44] See Peer Bearing, 587 F.Supp 2d at 1327.
[45] See WBF 2009 Final, 76 FR at 49733.
[46] See Watanabe, 2010 CIT LEXIS 144 *16-17 (upholding the Department's reliance on a corroborated rate from an earlier segment of the proceeding because there was no evidence questioning the prior corroboration); see also

In Lifestyle III, the CIT did not invalidate the 216.01 rate with respect to the PRC-wide entity. Rather, the CIT held that the 216.01 percent rate should not be applied as an AFA separate rate to a respondent if it did not reflect the respondent's commercial reality. Maoji did not qualify for a separate rate and was not assigned a separate rate as AFA. Thus, Lifestyle III does not support the importers' position. This is the first segment in which Maoji was selected for individual examination, and its prior separate rate margin of 6.68 percent was based on the margins of other companies who were cooperative respondents selected for individual examination.[47] Thus, the Department has never calculated an individual dumping margin for Maoji in a prior segment of the proceeding. Moreover, with respect to the 6.68 percent margin assigned to Maoji in a previous review, this was not intended to be a representative rate. Rather, the rate was based upon a review under section 777A(c)(2)(B) of the Act that allowed the Department to limit individual examination to three exporters who were requested for review. Further, the majority of Maoji's 55 producers do not have separate-rate status and are subject to the PRC-wide entity rate of 216.01 percent.

Comment 3: Whether the Department Should Determine that Maoji's Suppliers are the Price Discriminators

Petitioners

- The Department should determine that the 55 producers which supplied subject merchandise to Maoji are the price discriminators[48] with respect to the sales under review because: 1) Maoji's U.S. "customers," rather than Maoji, selected the producers from which they purchased subject merchandise; 2) although Maoji reported that it indirectly negotiated with U.S. customers with the help of its producers, it conceded that it did not have information about the specifications or physical characteristics of the products being sold; without this information, Maoji could not have negotiated with U.S. customers; 3) the record indicates that there is a scheme in which Maoji's producers, who are the price setters, funneled their subject merchandise through Maoji using its lower cash deposit rate;[49] and 4) ship manifest data show that some of Maoji's producers manufactured both subject and non-subject merchandise which they shipped to a U.S. customer, sometimes in the same shipping container, using the producer's invoice for non-subject merchandise but Maoji's invoice for subject merchandise. In some instances, the producer had certain characteristics which Petitioners claim support their position.[50]
- The Department has an obligation to investigate funneling, as noted by the CIT, and the Department has previously stated that it would report instances of fraud to CBP for

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Harvest Wholesale, Inc. v. United States, 26 CIT 358, 370 n. 21 (CIT 2002) (upholding the Department's use of a petition rate corroborated in the investigation where no new evidence discredited the rate).

[47] See Wooden Bedroom Furniture From the People's Republic of China: Corrected Notice of Court Decision Not in Harmony With the Final Determination of Sales at Less Than Fair Value and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order Pursuant to Court Decision, 73 FR 49162 (August 20, 2008).

[48] See Freshwater Crawfish Tail Meat from the People's Republic of China, 77 FR 21529 (April 10, 2012) ("Crawfish Final"), and accompanying I&D Memorandum at Comment 2 where the Department stated that it must determine which sale forms the proper basis for determining U.S. price under section 772 of the "Act".

[49] See BPI Memorandum at Note 2.

[50] See BPI Memorandum at Note 3.

proper action.[51] By determining that Maoji's producers are the price discriminators and by notifying CBP that the producers' case numbers and cash deposit rates, rather than Maoji's cash deposit rate, should have been used for the sales under review, the Department can stop evasion of antidumping duties.

- The Department should inform CBP that the producers are the price discriminators. This would assist CBP with any potential section 592 penalty determinations and with any potential criminal proceedings.

Importers

- There is no evidence that Maoji's producers negotiated the terms of sale with the customer, arranged shipment, or collected payment. Petitioners rely on "bits and pieces" of information that are irrelevant because the information does not specifically identify the price discriminator. Although Maoji did not cooperate with the Department, this does not mean the producers were the price discriminators.
- Even if the Department finds the producers to be price discriminators there is no evidence the importers engaged in wrongdoing. The importers purchased subject merchandise in arms-length transactions with Maoji and followed CBP rules by listing the antidumping duty cash deposit rate of the exporter on entry documents. It would be unreasonable to conclude that the importers should have known that the party from which they directly purchased the subject merchandise in arms-length transactions was not the price discriminator and, therefore, the importers would be responsible for determining the price discriminator. Moreover, CBP form 7501 does not instruct parties to list the price discriminator; so why would importers have reason to believe that they needed to know the identity of the price discriminator for customs purposes?

Department's Position

Although Petitioners' evidence raises questions as to whether Maoji's producers are the price discriminators, the information the Department sought to resolve this issue and to clarify conflicting record information was not provided by Maoji. At the time Maoji notified the Department that it would not participate in the review, it had not responded to a supplemental questionnaire regarding the sales process and separate rates. Specifically, in the supplemental questionnaire, the Department requested copies of documents sent between Maoji and its unaffiliated producers that were related to selected sales, copies of sales documents for selected sales, including sales for which Maoji provided emails as evidence of negotiations, examples of price negotiations for Maoji's top three U.S. customers, a flow chart describing the sales process for directly and indirectly negotiated sales, and a detailed explanation of how Maoji indirectly negotiates U.S. prices with the assistance of producers. Maoji never responded to any of these

[51] See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011), and accompanying I&D Memorandum at Comment 16 where the Department said that in instances where companies may be improperly misreporting their entries to CBP, such instances will be reported to CBP for proper action under that agency's fraud provisions; see also Certain Activated Carbon From the People's Republic of China, 75 FR 70208 (November 17, 2010) ("Activated Carbon"), and accompanying I&D Memorandum at Comment 1 where the Department said it would be able to fully review the respondent to which the cash deposit rate is being applied.

requests. The Department needs this information in order to understand the sales process, including the process of negotiating and setting prices. Absent this information, we have determined that there is not enough information on the record to conclusively determine who the price discriminators are. Without the requested information, and in light of Maoji's failure to establish that it is entitled to a separate rate, the appropriate determination is to deny Maoji separate-rate status.

Although Petitioners contend that the Department must determine that the producers are the price discriminators in order to prevent parties from inappropriately using Maoji's lower antidumping duty cash deposit rate, Maoji's lower cash deposit rate will not be the liquidation rate for POR entries of its merchandise nor will that rate be the cash deposit rate for Maoji's exports going forward. Given Maoji's failure to demonstrate that it is eligible for separate-rate status, POR entries under Maoji's antidumping duty cash deposit rate will be liquidated at the PRC-wide rate, rather than the lower cash deposit rate required at the time of entry. Thus, even if the alleged funneling scheme existed, parties will not be able to evade antidumping duties because Maoji's exports will be liquidated at the higher PRC-wide rate. Further, given that Maoji is no longer eligible for a separate rate, any possible "funneling" of subject merchandise through Maoji at a lower antidumping duty rate will not be able to continue. The cash deposit rate for future entries of subject merchandise directly exported to the United States by Maoji will be the PRC-wide rate. Hence, even if the alleged funneling scheme existed, parties will not be able to evade dumping duties by funneling sales through Maoji at a lower cash deposit rate because the lower rate no longer exists.

Nonetheless, Petitioners' allegations raise serious concerns. While we did not find it appropriate to make a determination as to who are the price discriminators based on the record of this review, the Department is committed to preventing the evasion of antidumping duties. We have already forwarded Petitioners' allegations to CBP for further investigation. We will also provide CBP with the importers' response to the allegations.

Comment 4: Potential Evasion of Antidumping Duties on Huansheng's Subject Merchandise

Petitioners

- Record evidence indicates the existence of a scheme related to the evasion of antidumping duties on Huansheng's subject merchandise. Because of the extensive proprietary information in this comment, details of this argument cannot be summarized in this memorandum. For a detailed summarization of this argument, see the Potential Duty Evasion Memorandum.[52]

[52] See memorandum from Patrick O'Connor, International Trade Compliance Analyst, through Howard Smith, to Abdelali Elouaradia, Office Director regarding "Potential Evasion of Antidumping Duties on Dongguan Huansheng Furniture Co.'s Subject Merchandise," dated concurrently with this memorandum ("Potential Duty Evasion Memorandum").

Other Parties

- Petitioners' claim is mere speculation and not supported by record evidence. Because of the extensive proprietary information in this comment, details of this argument cannot be summarized in this memorandum. For a detailed summarization of this argument, see the Potential Duty Evasion Memorandum.[53]

Department's Position

As noted above, the Department is committed to preventing the evasion of antidumping duties. The Department has provided CBP with Petitioners' allegation. We will also provide CBP with the Other Parties' response to the allegation. For a detailed explanation of the Department's position, see the Potential Duty Evasion Memorandum.[54]

Recommendation

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

Agree ✓ Disagree________

Paul Piquado
Assistant Secretary
for Import Administration

5 JUNE 2013
Date

[53] See id.
[54] See id.