C-570-971
Administrative Review
POR: 01/01/2015—12/31/2015
**Public Document**
AD/CVD Office VIII: JS

December 1, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results in the Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: 2015

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## I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of multilayered wood flooring (MLWF) from the People's Republic of China (PRC), as provided in section 703 of the Tariff Act of 1930, as amended (Act).

## II. BACKGROUND

### A. Case History

On December 8, 2011, the Department published the CVD *Order* on MLWF from the PRC.[1] On December 1, 2015, we published a notice of "Opportunity to Request Administrative Review" of the CVD *Order*.[2] We received several timely requests for an administrative review. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice initiating the review on

[1] *See Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order*, 76 FR 76693 (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), wherein the scope of the *Order* was modified (collectively, *Order*).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 75058 (December 1, 2015).

February 13, 2017.[3]

On February 14, 2017, we released and requested comments on data obtained from U.S. Customs and Border Protection (CBP) regarding entries of the subject merchandise from the PRC during the period of review (POR) for all of the exporters and/or producers for which a review was requested.[4] On February 23, 2017, Dalian Penghong Floor Products Co., Ltd. (Dalian Penghong) and Fine Furniture (Shanghai) Limited (Fine Furniture) submitted comments.[5] On April 3, 2017, we selected Fine Furniture and Jiangsu Senmao Bamboo Wood Industry Co. (Jiangsu Senmao) as mandatory respondents in this administrative review.[6]

We issued initial and supplemental questionnaires to the Government of the PRC (GOC), Jiangsu Senmao, and Fine Furniture between April 4, 2017, and July 27, 2017. Jiangsu Senmao and Fine Furniture submitted affiliation responses, initial responses, and supplemental responses between April 18, 2017, and June 16, 2017. The GOC submitted an initial response and supplemental responses between May 18, 2017, and August 3, 2017.

**B. Postponement of Preliminary Results**

The Department postponed the deadline for the preliminary results until December 1, 2017, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).[7]

**C. Period of Review**

The POR is January 1, 2015, through December 31, 2015.

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[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017) (*Initiation Notice*) (the Department inadvertently listed Double F Limited as a separate company under review; however, consistent with prior segments of this proceeding and evidence on the record of this review, we are not treating Double F Limited as a separate entity under review for these preliminary results as it is not a producer/exporter of the subject merchandise. For further discussion, *see* "Attribution of Subsidies" section below. *See also 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), and accompanying Preliminary Decision Memorandum (MLWF PDM)*;* unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Partial Rescission*; *2014*, 82 FR 22311 (May 15, 2017) (*Fourth Administrative Review*), and accompanying Issues and Decision Memorandum (IDM) (MLWF IDM)).

[4] *See* Memorandum, "Release of Customs and Border Protection (CBP) Data," dated February 14, 2017.

[5] *See* Dalian Penghong's Letter "Multilayered Wood Flooring from the People's Republic of China: Comments on CBP Data and Respondent Selection," dated February 23, 2017; and Fine Furniture's Letter, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Comments on Customs and Border Protection Data," dated February 23, 2017.

[6] *See* Memorandum,"Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China: Respondent Selection: 2015," dated April 3, 2017.

[7] *See* Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2015," dated August 11, 2017 (postponing the preliminary results until December 1, 2017).

## D. Rescission of Review, In Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. Dalian Penghong and the petitioner withdrew their requests for review on March 27, 2017, *i.e.*, within the 90-day deadline.[8] As no other party requested an administrative review of Dalian Penghong, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to Dalian Penghong.

## E. Intent to Rescind, in Part, the Administrative Review

We received timely filed no-shipment certifications from four companies.[9] The Department issued no-shipment inquiries to CBP requesting any information that might contradict the no-shipment claims. We have not received information to date from CBP that contradicts Changbai Mountain's, Jiangsu Yuhui's, Jiaxing Hentong Wood's, and Zhejiang Shuimojiangnan's claims of no sales, shipments, or entries of subject merchandise to the United States during the POR.[10] Because these companies timely filed their no-shipment certifications and CBP has not provided information that contradicts the companies' claims, we preliminarily intend to rescind the review of these companies. Absent any evidence of shipments being placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results of review.

Jiangsu Keri Wood and Linyi Bonn also timely filed no-shipment certifications.[11] However, both companies subsequently withdrew their no-shipment submissions.[12] Therefore, we are

[8] *See* Dalian Penghong's Letter, " Multilayered Wood Flooring from the People's Republic of China: Withdrawal of Review Request," dated March 27, 2017; *see also* Coalition for American Hardwood Parity's (petitioner) Letter, "Partial Withdrawal of Request for Administrative Review" dated March 27, 2017 (requesting the Department to withdraw its previous request to review Dalian Penghong).

[9] *See* Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.'s (Changbai Mountain) and Jiangsu Yuhui International Trade Co., Ltd.'s (Jiangsu Yuhui) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Shipments Certification," dated March 1, 2017; Jiaxing Hengtong Wood Co., Ltd.'s (Jiaxing Hengtong Wood) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 13, 2017; Zhejiang Shuimojiangnan New Material Technology Co., Ltd.'s (Zhejiang Shuimojiangnan) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 13, 2017.

[10] *See* Memorandum,"Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2015 Administrative Review of Multilayered Wood Flooring from the People's Republic of China," dated September 25, 2017, (stating that the CBP no-shipment data query identified entries of subject merchandise by Jiangsu Keri Wood, but did not identify entries of subject merchandise by Changbai Mountain, Jiangsu Yuhui, Jiaxing Hentong Wood, and Zhejiang Shuimojiangnan).

[11] *See* Jiangsu Keri Wood Co., Ltd.'s (Jiangsu Keri Wood) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Shipments Certification," dated March 2, 2017; Letter from Linyi Bonn Flooring Manufacturing Co., Ltd. (Linyi Bonn) "Multilayered Wood Flooring from the People's Republic of China: No Shipments Certification," dated March 3, 2017.

[12] *See* Jiangsu Keri Wood's Letter, "Multilayered Wood Flooring from the People's Republic of China: Comments on No Shipments Letter," dated September 29, 2017; Linyi Bonn's Letter, "Multilayered Wood Flooring from the People's Republic of China: Withdrawal of No Shipments Certification," dated June 12, 2017.

continuing to include Linyi Bonn and Jiangsu Keri Wood in this administrative review for purposes of the preliminary results.

## III. SCOPE OF THE ORDER[13]

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[14] in combination with a core.[15] The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, "engineered wood flooring" or "plywood flooring." Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated 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

[13] *See Order; see also, Multilayered Wood Flooring from the People's Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders*, 82 FR 27799 (June 19, 2017).
[14] 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.
[15] Department of Commerce Interpretive Note: The Department interprets this language to refer to wood flooring products with a minimum of three layers.

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; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 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; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 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.

## IV. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; fails to provide information within the 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available (AFA) when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of these preliminary results, as discussed below, we have relied on adverse facts available due to the GOC's lack of response to the initial questionnaire and supplemental questionnaires regarding the alleged provision of electricity.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[16] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this administrative review.[17]

**Provision of Electricity for LTAR**

As discussed below under the section "Programs Preliminarily Found to be Countervailable," the Department is investigating whether the GOC provided electricity for less than adequate remuneration (LTAR).

The GOC failed to provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, provided a benefit within the meaning of section 771(5)(E) of the Act, and was specific within the meaning of section 771(5A) of the Act.

In order for the Department to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, in the Department's initial questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the provinces and across tariff end-user categories. We asked the GOC to provide the original price proposals for applicable tariff schedules that were in effect during the POR for each province in which a mandatory respondent or any reported "cross-owned" company is located.[18]

Instead of providing the requested price proposal documents, the GOC stated:

> 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

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[16] *See* Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

[17] *Id*., 80 FR at 46794-95. The 2015 amendments are found at https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl.

[18] *See* Department Letter re: Initial Countervailing Duty Questionnaire, dated April 4, 2017, (Initial CVD Questionnaire) at II-14.

therefore unable provide them with this response."[19]

The GOC further stated that, for periods after April 20, 2015, there are no "Provincial Price Proposals" and the NDRC no longer reviewed proposed electricity pricing schedules submitted to it by provincial governments.[20] The GOC contends that the NDRC no longer exercised control over provincial electricity price adjustments and has legally begun delegating total pricing autonomy to the provinces and only ratifies prices submitted for review since April 2015.[21] The GOC submitted an updated price adjustment notice issued by the NDRC, Notice 3105, on December 27, 2015.[22]

In its supplemental questionnaire response, the GOC confirmed that, in addition to Notices 748 and 3105, the Notice of the NDRC on establishment of Coal and Electricity Price Linkage Mechanism (Notice 2909) also provides that the NDRC continues to play a central role in determining the principles and general adjustment level of each province's electricity sales price, while the specific electricity price of each electricity usage catalogue category is determined by provinces based on their own actual situations.[23] The GOC further stated that the Electric Power Law of China, specifically Article 40, provides the NDRC with the authority to regulate electricity pricing across different provinces, and that the NDRC, pursuant to Notice 748, has the discretion to delegate the authority to publish price schedules (*i.e.*, each province and sub-central jurisdiction has the authority to set its own price schedule).[24]

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.[25] Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour. Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.[26] Article 2 indicates that this price reduction "mainly consist of the reductions in prices of industrial and commercial electricity."[27] Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.[28] Articles 6 and 7, respectively, indicate that provincial pricing authorities shall "formulate and publish their detailed full packages of electricity price adjustment of upload and sales prices in accordance with the average price adjustment levels set out in Annex 1 and submit the packages to this Commission for record" and that the "price adjustments mentioned above are to be implemented on April 20th, 2015."[29] Lastly, Article 10 directs that, "Provincial price authorities shall carefully organize and administer this round of

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[19] *See* GOC's May 18, 2017 Initial Questionnaire Response (GOC IQR) Electricity Appendix at 11; GOC's June 19, 2017 Supplemental Questionnaire Response (GOC SQR) at 1.
[20] *See* GOC IQR at Electricity Appendix at 11.
[21] *Id.*; *see also, Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 10, 2017), and accompanying Decision Memorandum (OTR Tires PDM) at 10.
[22] *See* GOC IQR at Exhibit 22 (Notice 3105).
[23] *See* GOC SQR at Exhibit SQR-1.
[24] *Id.* at Exhibit SQR-3 (Notice 748).
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*

electricity price adjustments to ensure that the price adjustments are made in time."[30]

Notice 3105, also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates at Articles 2 and 10, that local price authorities shall implement in time the price reductions included in its Annex and report the resulting prices to the NDRC.[31]

Consequently, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulate that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the Government of the PRC states to be the case.[32] Rather, both notices indicate that the NDRC continues to play an influential role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.[33]

In response to our questions regarding how the electricity pricing values are determined, the GOC explained how prices should theoretically be formulated but did not provide the information relied on to generate these particular pricing values.[34] Further, the GOC did not provide the requested documentation or sources to explain the actual process that led to the prices.[35] In addition, the GOC provided no province-specific pricing information as requested.[36]

With respect to price derivation, the Department requested specific documentation demonstrating how pricing values are generated at the provincial level.[37] The GOC failed to provide complete responses to these requests. Specifically, it failed to provide the specific derivation of and the methodology used to calculate pricing values. Instead, and in sum, the GOC asserted that "price adjustment values are themselves mandated to a large extent by market forces to reflect changes in prices of coal for electricity generation in different regions during a specific period," and did not provide any documentation to support its claims stating that the "Department's request for documentation support is overly broad."[38] Lastly, the GOC failed to provide the draft price schedules submitted by the provincial price bureaus to the NDRC as requested.[39]

The Department requested that the GOC identify all of the Central Government measures which implemented the delegation of electricity pricing authority to the provinces and municipalities.[40] The GOC referred the Department to Notice 748 and Notice 2909.[41] As discussed above, these

[30] *Id.*
[31] *See* Notice 3105.
[32] *See* Notice 748 and Notice 3105; *see also* GOC IQR Appendix-A: Provision of Electricity for LTAR—Shanghai Municipality at 20-21.
[33] *See* GOC SQR at 3.
[34] *See* GOC's August 3, 2017 Supplemental Questionnaire Response (GOC SQR2) at 1-2.
[35] *Id.*
[36] *See* GOC SQR at 2-3.
[37] *See* Department Letter re: First Supplemental Questionnaire, dated June 2, 2017.
[38] *See* GOC SQR at 4-5.
[39] *See* GOC SQR2 at 2-3.
[40] *See* GOC SQR at 3.
[41] *Id.*

two documents, issued by the NDRC, provide the NDRC with the ability to delegate regulating electricity pricing to other authorities, and direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. Additionally, we requested that the GOC explain whether the province-specific pricing values indicated in Notice 748 were mandatory for each province and sub-central jurisdiction. The GOC responded that "{t}he price adjustment values contained in Notice 748 must be taken into account by each province . . . but are not strictly mandatory."[42] This response is not consistent with the directive language in Notice 748, as discussed above.

The Department additionally requested that the GOC explain, with supporting documentation, how the pricing values indicated in the Appendix to NDRC Notice 748 were derived, including the specific factors or information relied upon by the NDRC. In response, the GOC merely repeated its initial explanation, as discussed above.[43] Subsequently, the GOC failed to identify and provide the sources of information on which this explanation was based.[44]

In addition to our request for a detailed explanation of how the NDRC derived the pricing values indicated in Notice 748 and Notice 3105, we requested that the GOC explain the factors and information the province price bureaus relied on to generate their submitted pricing values.[45] In its response, the GOC repeated its previously submitted, aforementioned responses regarding price derivation, *i.e.*, the "market prices of electricity coal."[46] As part of its response to this question, the GOC again failed to provide requested sources and relevant documentation to support its statements.

The above requested information is crucial to the Department's analysis of how prices are set within the PRC, which, in turn, is crucial to determining whether this program constitutes a financial contribution, is specific, and confers a benefit. Absent complete information from the GOC regarding the provincial electricity rates and how those prices are set, we are unable to rely on the minimal information provided by the GOC such as various notices and the unsupported claim that price adjustments reflect market forces. Accordingly, and consistent with prior cases in which the GOC provided a similar response,[47] we preliminarily find that the GOC's answers are inadequate and do not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. The GOC did not provide the requested price proposal documents or explain how price increases were formulated and has thus significantly impeded this proceeding. As a result, we preliminarily find that the conditions articulated in sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act are met, and thus preliminarily rely on facts otherwise available.

Furthermore, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, in accordance with section

[42] *See* GOC SQR at 4.
[43] *Id.*
[44] *See* GOC SQR2 at 2.
[45] *See* GOC SQR at 6.
[46] *Id*.
[47] *See, e.g., Fourth Administrative Review* and MLWF IDM at 8-10; *see also,* OTR Tires PDM.

776(b) of the Act. While the GOC acknowledged the existence of the provincial price proposals, the GOC withheld them without explaining why it could not submit such documents on the record of this proceeding, particularly as the Department permits parties to submit information under an Administrative Protective Order (APO) for limited disclosure if it is business proprietary in nature. Moreover, while the GOC provided the published electricity tariffs for all provinces, municipalities and autonomous regions, this information is not germane to an analysis of how and why the prices of the tariff schedules in effect during the POR were drafted and implemented. The GOC also did not ask for additional time to gather and provide such information, nor did the GOC provide any other documents that would have answered the Department's questions.

Therefore, because the GOC failed to cooperate by not acting to the best of its ability in responding to the Department's request for this information, the application of AFA pursuant to section 776(b) of the Act is warranted. The requested documents, which possibly contain the details of the GOC's electricity price adjustment process, are necessary for the Department to conduct the proper analysis of the program with respect to financial contribution or specificity. Thus, in applying AFA, we preliminarily find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC also failed to provide requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also drawing an adverse inference in selecting from the facts available the benchmarks for determining the existence and amount of the benefit.[48] The benchmark rates we selected are derived from information from the record of this review and are the highest electricity rates on this record for the applicable rate and user categories.[49]

## V. SUBSIDIES VALUATION

### A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[50] The Department finds the AUL for this segment of this proceeding to be 10 years (*i.e.*, 2006-2015), pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as updated.[51] The Department notified the respondents of the 10-year AUL in the initial questionnaire and requested data accordingly.[52] No party in this segment of the proceeding disputed this allocation period.

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[48] *See* section 776(b) of the Act.
[49] *See* Memorandum, "Preliminary Results Calculations for Fine Furniture (Shanghai) Limited and Great Wood (Tonghua) Ltd.," dated concurrently with this memorandum (Fine Furniture Preliminary Calculation Memorandum); *see also* Memorandum, "Preliminary Results Calculations for Jiangsu Senmao," dated concurrently with this memorandum (Jiangsu Senmao Preliminary Calculation Memorandum).
[50] *See* 19 CFR 351.524(b).
[51] *See How to Depreciate Property*, U.S. Internal Revenue Service Publication 946 (2008), at Table B-2: Table of Class Lives and Recovery Periods.
[52] *See* Initial CVD Questionnaire.

Further, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are expensed to the year of receipt rather than across the AUL.

**B. Attribution of Subsidies**

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[53]

Jiangsu Senmao did not report any companies with which it is cross-owned that would give rise to subsidy attributions within the meaning of 19 CFR 351.525(b)(6)(ii)-(v).

<u>Fine Furniture</u>

Fine Furniture reports that it was founded in 2000 through a share capital contribution of three parties.[54] Fine Furniture has responded on behalf of itself and Great Wood (Tonghua) Limited (Great Wood).[55] These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.[56] For Fine Furniture, we are attributing subsidies it received to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

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[53] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[54] *See* Fine Furniture's May 12, 2017, Initial Questionnaire Response (FF IQR) at 3.
[55] *Id*. at 4.
[56] *See* Fine Furniture's April 18, 2017, Affiliation Response (Fine Furniture AFFR) at 5-6.

Fine Furniture identified Great Wood as a supplier of kiln-dried lumber, cut-to-size lumber, and face veneer for furniture and flooring.[57] We preliminarily determine that the inputs supplied by Great Wood to Fine Furniture are primarily dedicated to the production of a downstream product and, thus, for purposes of the preliminary results, we are attributing subsidies provided to Great Wood to Fine Furniture pursuant to 19 CFR 351.525(b)(6)(iv), by dividing the benefit amounts by the combined sales of Great Wood and Fine Furniture (net of intercompany sales).

1. Entered Value Adjustment

Fine Furniture reported that its affiliate Double F Limited (Double F) issued invoices with a mark-up for Fine Furniture's sales of subject merchandise to the United States.[58] Thus, Fine Furniture requested that the Department make an adjustment to the calculation of the subsidy rate to account for the mark-up between the export value from the PRC and the entered value of subject merchandise into the United States, as the Department has done in the underlying investigation and previous review.[59]

According to Fine Furniture, the adjustment is appropriate because: 1) the U.S. invoice is issued through Double F and includes a mark-up from the invoice issued from Fine Furniture to Double F; 2) the exporter, Fine Furniture, and Double F who invoices the customer are affiliated; 3) the U.S. invoice establishes the customs value to which countervailing duties are applied; 4) there is a one-to-one correlation between the Double F invoice and the Fine Furniture invoice; 5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.[60]

The Department has previously adjusted the calculation of the subsidy rate when the sales value used to calculate that subsidy rate did not match the entered value of the merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can demonstrate that the six criteria enumerated above are met.[61] Fine Furniture has supported its claim and the information permits an accurate calculation of the adjustment; therefore, we have preliminarily determined to make an adjustment to the entered value.[62]

## C. Denominators

When selecting an appropriate denominator to use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to Be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Where the program has been

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[57] *Id*.
[58] *See* FF IQR at 26-27.
[59] *Id*.
[60] *Id*.
[61] *See*, *e.g.*, MLWF PDM at 7-8; unchanged in *Fourth Administrative Review*.
[62] For the details of the calculations of the adjusted values, *see* Fine Furniture Preliminary Calculation Memorandum.

found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs**.**

### D. Discount Rates

The Department is examining non-recurring, allocable subsidies.[63] The derivation of the discount rates used to value these subsidies is discussed below.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used as the discount rate the long-term interest rate calculated for the year in which the nonrecurring subsidy was approved by the government.[64]

## VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

### A. *Programs Preliminarily Determined to Be Countervailable*

#### 1. Allowance for Attorney's Fees

Fine Furniture reported receiving an allowance from the GOC in 2011, 2012, 2013, 2014 and 2015 under this program, which is intended to support Chinese enterprises involved in U.S. antidumping proceedings.[65] In return for these grants, Chinese enterprises allow the GOC access to their business proprietary legal documents related to antidumping proceedings.[66] The GOC reported that the program was terminated on January 1, 2014.[67] However, the GOC corroborated Fine Furniture's reporting that it received assistance under this program during the AUL and POR.[68]

Consistent with the Department's prior review of this program, we preliminarily find that the grants provided under this program confer a countervailable subsidy in the form of a direct transfer of funds from the government in accordance with section 771(5)(D)(i) of the Act, and that they provide a benefit in the amount of the grants.[69] Further, we continue to find the grants to be export-contingent within the meaning of section 771(5A)(B) of the Act because the receipt of the grants is limited to companies that export.[70]

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[63] *See* 19 CFR 351.524(b)(1).
[64] *See* Fine Furniture Preliminary Calculation Memorandum.
[65] *See* FF IQR at 14.
[66] *Id*.
[67] *See* GOC IQR at 5.
[68] *Id*.
[69] *See, e.g.*, *Fourth Administrative Review.*
[70] *See* GOC IQR at 5.

As noted, the GOC corroborated that Fine Furniture received a grant during the POR but the GOC did not provide information regarding the approval dates for total grant amounts received, stating only that the program was operated on an annual basis.[71] Notwithstanding the GOC's failure to provide the requested information, as Fine Furniture reported having received grants in various years, we continue to find that assistance under this program meets the criteria in 19 CFR 351.524(c)(2) and that it is therefore appropriate to treat these grants as non-recurring subsidies with benefits allocable across the 10-year AUL (*i.e.*, 2006-2015) as explained above under "Allocation Period." Therefore, we calculated the benefit received in each year. We first applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2).[72] We then divided the grants received by Fine Furniture by that year's respective export sales. For grants received in 2012 and 2015, the results were each less than 0.5 percent, so we expensed those benefits to the respective years of receipt.[73] For grants received in 2011, 2013, and 2014, the results were each greater than 0.5 percent, so we allocated those benefits over the AUL after receipt.[74] To calculate the countervailable subsidy rate for 2015, we divided the benefit amounts allocated to 2015 by Fine Furniture's export sales during the POR.[75] On this basis, we preliminarily find that Fine Furniture received a countervailable subsidy of 0.69 percent *ad valorem* under this program during the POR. [76]

Jiangsu Senmao reported not using this program.

2. Provision of Electricity for LTAR

The Department has investigated and determined that this LTAR program confers a countervailable subsidy in several prior China investigations.[77] As discussed in "Use of Facts Otherwise Available and Application of Adverse Inferences," we are preliminarily basing our finding on the government's provision of electricity, in part, on AFA. As AFA, we determine that the GOC's provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific within the meaning of section 771(5A)(D) of the Act.

In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, may preliminarily find that a financial contribution exists

[71] *Id*.
[72] *See* Fine Furniture Preliminary Calculation Memorandum.
[73] *Id*.
[74] *Id*.
[75] *Id*.
[76] *Id*.
[77] *See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 22-23; *see also, Fourth Administrative Review*.

under the alleged program and that the program is specific.[78] However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

Both Fine Furniture and Jiangsu Senmao reported using this program, and provided data on their electricity consumption and the electricity rates paid during the POR.[79] To measure the benefit under the program, we compared the rates paid by each respondent for its electricity to the highest rates that it could have paid in the PRC during the POR.

In deriving the benchmark,[80] we selected the highest non-seasonal provincial rates in the PRC during the POR for each applicable user category (*e.g.*, "large industrial user," and "normal industrial and commercial user"), voltage class (*e.g.*, 1-10kv, 35kv), time period (general, peak, normal, and valley), and basic fee (*e.g.*, "base charge/maximum demand") as provided by the GOC.[81] We selected the highest non-seasonal provincial rates in the PRC during the POR as AFA, which, as discussed above, we applied as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. We calculated benchmark electricity payments by multiplying consumption volumes by the benchmark electricity rate corresponding to the user category, voltage class, and time period (*i.e.*, peak, normal, and valley), where applicable. We then compared the calculated benchmark payments to the actual electricity payments made by the company during the POR. Where the benchmark payments exceeded the payments made by the company, a benefit was conferred. Based on this comparison, we preliminarily find that electricity was provided for LTAR to Fine Furniture and Jiangsu Senmao.

To calculate the countervailable subsidy rates for the POR, we summed each individual company's benefits and divided the amount by the appropriate sales denominator for the POR. On this basis, we preliminarily determine that Fine Furniture received a countervailable subsidy of 0.20 percent *ad valorem*,[82] and Jiangsu Senmao received a countervailable subsidy of 0.06 percent *ad valorem*.[83]

B. *Programs Preliminarily Determined to Be Not Used*

1. Income Tax Subsidies for Foreign-Invested Enterprises (FIEs) Based on Geographic Location

2. International Market Development Fund Grants for Small and Medium Enterprises

3. Value Added Tax (VAT) and Tariff Exemptions on Imported Equipment

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[78] *See, e.g., Hardwood and Decorative Plywood from the People' Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3, "Provision of Electricity."
[79] *See* FF IQR at Exhibit 8, and Fine Furniture's June 16, 2017 Supplemental Questionnaire Response (FF SQR) at Exhibit 7; and Jiangsu Senmao's May 17, 2017 Primary Questionnaire Response (JS PQR) at Exhibit 5.
[80] *See* 19 CFR 351.511(a)(2).
[81] *See* GOC IQR at Exhibit E-14 and E-15.
[82] *See* Fine Furniture Preliminary Calculation Memorandum.
[83] *See* Jiangsu Senmao Preliminary Calculation Memorandum.

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

10. Jinzhou New District 2012 Technology Innovation Award

11. Jinzhou District 2013 New and High Technology Research & Development Plan Industrialization Special Fund

12. Technical Innovation Fund from Linyi Bureau of Finance

13. 2005 Enterprise Development Special Funds Awarded to Penghong Wood

11. Local Income Tax Exemption and Reductions for "Productive" FIEs

12. Provision of Electricity at LTAR for FIEs and "Technology Advanced" Enterprises by Jiangsu Province

13. Program of Loan Interest Discount

14. Program of Provincial Famous Brand and New Product

15. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of "Famous Brands"

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

18. Patent Application Support

19. Patent Fund

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

The statute 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 states that for companies not investigated, in general, we will determine an all-others rate by using the weighted average countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

As indicated in the accompanying *Federal Register* notice of the preliminary results, dated concurrently with this preliminary decision memorandum, we preliminarily determine that Fine Furniture received countervailable subsidies that are above *de minimis* and that Jiangsu Senmao received countervailable subsidies that are *de minimis*. Therefore, for these preliminary results, we calculated the rate for non-selected companies by excluding the *de minimis* rate calculated for Jiangsu Senamo.[84] Accordingly, for each of the 105 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents, we are applying a final subsidy rate of 0.89 percent *ad valorem*, consistent with section 705(c)(5) of the Act.[85]

[84] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Preliminary Intent to Rescind in Part: Calendar Year 2015*, 82 FR 13792 (March 15, 2017), and accompanying Preliminary Decision Memorandum at 4 (applying above *de minimis* rate to non-selected companies in review where one individually selected company had a preliminary above *de minimis* rate and one individually selected company had a *de minimis* rate); unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017), and accompanying IDM at 1-2.
[85] For a list of the non-selected companies, *see* the *Federal Register* notice, signed concurrently with this preliminary decision memorandum.

## VIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

| ☒ | ☐ |
|---|---|
| ____________ | ____________ |
| Agree | Disagree |

12/1/2017

X

Signed by: GARY TAVERMAN

______________________________

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance