C-570-971
Administrative Review
POR: 1/1/2015 – 12/31/2015
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DATE: June 8, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Final Results and Partial Rescission of Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China; 2015

I. SUMMARY

The Department of Commerce (Commerce) has completed this administrative review of the countervailing duty (CVD) order on multilayered wood flooring (MLWF) from the People's Republic of China (China), for the period of review (POR) January 1, 2015, through December 31, 2015, in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (Act). The mandatory respondents are Jiangsu Senmao Bamboo Wood Industry Co., Ltd. (Jiangsu Senmao) and Fine Furniture (Shanghai) Limited (Fine Furniture) and its cross-owned entity Great Wood (Tonghua) Limited (Great Wood). We find that the mandatory respondents received countervailable subsidies during the POR. There are also 105 companies for which a review was requested but were not selected for individual examination. We are using the mandatory respondents' CVD rates that are above *de minimis* and not based upon facts available to determine the rate applicable to these non-selected companies. We have analyzed the case and rebuttal briefs submitted by interested parties following the *Preliminary Results*,[1] and address the issues raised in the "Analysis of Comments" section below.

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[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent To Rescind the Review in Part; 2015*, 82 FR 57722 (December 7, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On December 8, 2011, Commerce published the CVD *Order* on MLWF from China.[2] Commerce published the *Preliminary Results* of this administrative review in the *Federal Register* on December 7, 2017. We invited interested parties to comment on the *Preliminary Results*. On December 1, 2017, Commerce released, and invited comments on, draft cash deposit, liquidation, and partial rescission instructions.[3] On January 2, 2018, we received a case brief from Dun Hua Sen Tai Wood Co., Ltd.[4] On January 16, 2018, we received case briefs from the Government of the People's Republic of China (GOC) and Fine Furniture.[5] We did not receive case briefs from any other interested party, nor did we receive any rebuttal briefs.

III. LIST OF INTERESTED PARTY COMMENTS

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

Comment 1: Electricity for Less-than-Adequate Remuneration (LTAR) – Application of Adverse Facts Available (AFA)

Comment 2: Electricity for LTAR – Calculation Methodology

Comment 3: Countervailability of Allowance for Attorney's Fees Program

Comment 4: Whether to Assign Non-Selected Company Rate to Dun Hua Sen Tai Wood

IV. SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[6] in combination with a core.[7] 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.

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[2] *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) (collectively, *Order*).
[3] *See* Memorandum regarding: "Customs Instructions," dated December 1, 2017.
[4] *See* Letter from Dun Hua Sen Tai Wood, "Multilayered Wood Flooring from the People's Republic of China (C-570-971): Case Brief of Dun Hua Sen Tai Wood Co., Ltd.," dated January 2, 2018.
[5] *See* Letters from the GOC, "Case Brief of the Government of the People's Republic of China," and Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Case Brief," dated January 16, 2018.
[6] 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.
[7] Department of Commerce Interpretive Note: The Department interprets this language to refer to wood flooring products with a minimum of three layers.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard ("HDF"), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS"): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 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.

V. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Commerce received timely filed no-shipment certifications from six companies. We submitted a no-shipment inquiry to U.S. Customs and Border Protection (CBP) on June 20, 2017, with regard to these companies.[8] We received no information from CBP to contradict the claims of Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., Jiangsu Yuhui International Trade Co., Ltd., Jiaxing Hengtong Wood Co., Ltd., and Zhejiang Shuimojiangnan New Material Technology Co., Ltd., that they had no sales, shipments, or entries of subject merchandise to the United States during the POR.[9] We did, however, receive information that contradicted Jiangsu Keri Wood's and Linyi Bonn's claims of no sales, shipments or entries of subject merchandise to the United States during the POR.[10] After receiving notice of this information, Jiangsu Keri Wood and Linyi Bonn withdrew their no-shipment certifications.[11] Because the above-listed companies, other than Jiangsu Keri Wood and Linyi Bonn, timely filed their no-shipment certifications and CBP has not provided information to contradict the companies' claims, we are rescinding the review of these companies, pursuant to 19 CFR 351.213(d)(3).

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[8] *See* Customs Instructions to CBP re: No shipments inquiry for certain multilayered wood flooring from the People's Republic of China, Message No. 7171306, dated June 20, 2017.
[9] *See* Memoranda entitled "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 did not identify any entries of subject merchandise.
[10] *Id*.; *see also* Jiangsu Keri Wood Co., Ltd.'s (Jiangsu Keri Wood) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Shipment Certification," dated March 2, 2017 2017; Linyi Bonn Flooring Manufacturing Co., Ltd.'s (Linyi Bonn) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Shipments Certification," dated March 3, 2017.
[11] *See* Jiangsu Keri Wood's Letter, "Multilayered Wood Flooring form 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.

VI. SUBSIDIES VALUATION INFORMATION

Allocation Period

Commerce made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*.[12]

Attribution of Subsidies

Commerce made no changes to the attribution methodologies used in the *Preliminary Results* for attributing subsidies.[13]

VII. DISCOUNT RATES

Commerce made no changes to the loan benchmarks and discount rates used in the *Preliminary Results*.[14]

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE FACTS AVAILABLE AND CORROBORATION OF SECONDARY INFORMATION

Commerce made no changes to its determinations to apply AFA and its corroboration of secondary information regarding the provision of electricity for LTAR in the *Preliminary Results*.[15]

IX. PROGRAMS DETERMINED TO BE COUNTERVAILABLE

Commerce made certain changes to the *Preliminary Results* with regard to one program, as noted below. The final program rates calculated for Fine Furniture and Jiangsu Senmao are as follows:

Jiangsu Senmao and Fine Furniture:

1. Provision of Electricity for LTAR: 0.17 percent *ad valorem* for Fine Furniture, and 0.11 percent *ad valorem* for Jiangsu Senmao. The rates reflect certain changes resulting from corrections to different ministerial errors in the calculation of the benefit as to each respondent, which we address below under Comment 2.

Fine Furniture:

1. Allowance for Attorney's Fees: 0.68 percent *ad valorem* for Fine Furniture. The rate remains unchanged notwithstanding arguments raised by Fine Furniture, which we address below under Comment 3.

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[12] *See* PDM at 10-11.
[13] *Id*. at 11-12.
[14] *Id*. at 13.
[15] *Id*. at 5-10.

X. PROGRAMS DETERMINED NOT TO BE USED

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

1. Income Tax Subsidies for Foreign-Invested Enterprises (FIEs) Based on Geographic Location
2. International Market Development Fund Grants for Small and Medium Enterprises
3. Value Added Tax (VAT) and Tariff Exemptions on Imported Equipment
4. Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County
5. International Market Development Fund Grants for Small and Medium Enterprises
6. Minhang District Little Giant Enterprise Support
7. Minhang District Pujiang Town Enterprise Support
8. Technology Innovation Support
9. Support for Developing a National Technology Standard
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. Program of Loan Interest Discount
14. 2005 Enterprise Development Special Funds Awarded to Penghong Wood
15. Local Income Tax Exemption and Reductions for “Productive” FIEs
16. Provision of Electricity at LTAR for FIEs and “Technology Advanced” Enterprises by Jiangsu Province
17. Program of Loan Interest Discount
18. Program of Provincial Famous Brand and New Product

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

20. Program of VAT Refunds for Production and Processing Comprehensive Utilization Products by Using Three Leftover Materials and Down-Graded Small Woods

21. Party Members' Activities Fund

22. Patent Application Support

23. Patent Fund

XI. ***AD VALOREM* RATE FOR NON-SELECTED COMPANIES UNDER REVIEW**

The Act and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all others rate under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act instructs Commerce to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis*, or facts available rates.

As indicated in the accompanying *Federal Register* notice of the final results, dated concurrently with this decision memorandum, we 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 final results, we calculated the rate for non-selected companies by excluding the *de minimis* rate calculated for Jiangsu Senmao.[16] Accordingly, for each of the 105 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents and did not fail to cooperate, we derived a final subsidy rate of 0.85 percent *ad valorem*.[17]

[16] *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 Issues and 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).

[17] For a list of the non-selected companies, *see* the Federal Register notice, signed concurrently with this decision memorandum.

ANALYSIS OF COMMENTS

Comment 1: Electricity for LTAR – Application of AFA

GOC Case Brief

- The GOC stresses that all three conditions under Section 771(5) of the Act must be met to determine that a subsidy is countervailable. The GOC contends that a subsidy must provide a financial contribution, benefit and specificity to be considered countervailable. In addition, the GOC argues that the conclusions relied on by Commerce to justify AFA did not meet the conditions required by Section 776 of the Act. In fact, the GOC contends that it provided the necessary information to conclude that the provision of electricity in China is not specific.
- The GOC asserts that the necessary conditions under Section 771(5A)(iii) of the Act were not met to determine specificity based on AFA.
- The GOC contends that the provision of electricity is not specific as a matter of law and requires that all eligible commercial and residential users are supplied with electricity at their request under Article 26 of the Law on Electrical Power.[18] Additionally, the wood flooring industry did not consume disproportionately large amounts of electricity during the POR.[19] Finally, the GOC does not set electricity rates at the central level; electricity pricing is determined at the provincial levels.
- The GOC argues that Commerce's requests for information were often overly broad and unreasonably burdensome.
- The GOC's failure to provide draft schedules submitted by the provinces to the GOC before April 20, 2015, does not justify the use of AFA because these documents are official working documents. In addition, the GOC contends that there is no substantial difference in content between the drafts and final schedules.

Fine Furniture Case Brief

- Even if Commerce determines that the electricity for LTAR program is specific under AFA, Commerce must reverse its finding for benefits calculated after April 20, 2015, on the basis of the GOC's new provincial pricing policy.
- Commerce incorrectly determined in the *Preliminary Results* that the provision of electricity for LTAR is regionally specific, as there is information on the record regarding the reasons for differences in electricity rates between different provinces. Commerce only requested original provincial price proposals for provinces where the mandatory respondents were located. The GOC did not refuse to answer any questions regarding regional differences in electricity rates.
- The provision of electricity is, by definition, a domestic subsidy, as electricity cannot be exported/imported. However, Commerce has not made the necessary findings to classify a domestic subsidy as specific under section 771(5A)(D) of the Act.
- Commerce did not cite to the record for support that electricity rates differ for users or industries within the regions in order to properly conclude that a domestically-available benefit is regionally specific.

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[18] *See* GOC's May 18, 2017 Initial Questionnaire Response (GOC's IQR) at Exhibit E-2.
[19] *Id.* at Exhibits E-6-JL, E-6-JS, and E-6-SH.

- Commerce's *de facto* finding of regional specificity is not consistent with the Agreement on Subsidies and Countervailing Duty Measures which states at Article 2.2 that "…the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy…"). The GOC did not fail to respond to questions regarding whether the rates were generally applicable within provinces.

Department Position:

We disagree with the GOC's argument that it provided the necessary information to determine that electricity is not countervailable under section 771(5) of the Act. Furthermore, we disagree with the GOC that electricity rates in China are based on market principles, that the GOC answered each and every question, and that the electricity for LTAR program is not specific in this review. As an initial matter, Commerce requested that the GOC provide information on how the provincial electricity tariff schedules were developed by the GOC's National Development and Reform Commission (NDRC). As noted in the *Preliminary Results*, the GOC did not provide all of the requested information and accordingly, we found the GOC to be uncooperative in this respect.[20] Specifically, in Commerce's initial questionnaire, for each province in which a respondent is located, Commerce 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.[21] The GOC provided no province-specific information in response to these questions in its initial questionnaire response.[22] Commerce reiterated these questions in a supplemental questionnaire and the GOC again did not provide the requested information, including the draft price schedules, in its supplemental questionnaire response.[23]

Regarding the new provincial pricing policy after April 20, 2015, we noted in the *Preliminary Results* that the NDRC continues to play a central role in determining the principles and general adjustment level of each province's electricity sales price. Furthermore, we stated that the NDRC has 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. We also noted that the GOC provided no province-specific pricing information as requested for the period after April 20, 2015.[24]

Regarding the GOC's argument that Commerce's requests for information were often overly broad and unreasonably burdensome, the GOC could have provided documentation to

[20] *See* PDM at 5-6 (citing sections 776(a)(1), 776(a)(2)(A), and 776(b) of the Act and finding, based on an adverse inference, that the GOC's provision of electricity constitutes a financial contribution and is specific to the multilayered wood flooring industry within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively).
[21] *Id.*, *see also* Commerce Letter re: Initial Countervailing Duty Questionnaire, dated April 4, 2017 (Initial CVD Questionnaire) at II-14.
[22] *See* GOC's May 18, 2017 Initial Questionnaire Response (GOC IQR) Electricity Appendix at 11.
[23] *See* GOC's June 19, 2017 Supplemental Questionnaire Response (GOC SQR) at 1.
[24] *See* GOC's August 3, 2017 Supplemental Questionnaire Response (GOC SQR2) at 2-3.

demonstrate the specific derivation of and the methodology used to calculate pricing values. Instead, as noted in the *Preliminary Results*, 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 that the "Department's request for documentation support is overly broad."[25]

As a result of the GOC's unwillingness to cooperate, Commerce was unable to determine whether the electricity rates included in the electricity schedules submitted by the GOC were calculated based on market principles. While the GOC acknowledged the existence of the provincial price proposals,[26] the GOC withheld the actual price proposals without explaining why it could not submit such documents on the record of this proceeding, particularly as Commerce permits parties to submit information under an APO for limited disclosure if it is business proprietary in nature. Moreover, while the GOC provided electricity data for all provinces, municipalities and autonomous regions,[27] this information is not germane to an analysis of how and why the prices in the tariff schedules in effect during the POR were drafted and implemented because the schedules themselves do not provide information as to what cost analysis and decisions were made in arriving at the published prices. Furthermore, the GOC did not ask for additional time to gather and provide such information, nor did the GOC provide any other documents in an attempt to answer Commerce's questions.

As to the GOC's argument concerning whether Commerce must determine that an industry is specific under section 771 (5A)(D)(iii) of the Act, we note that Commerce may determine an industry is specific on a *de jure*, *de facto* or geographical basis, under sections 771(5A)(D)(i), (iii), and (iv) of the Act, respectively. Moreover, we determined that the wood flooring industry is specific under section 771(5A) of the Act generally, based on AFA. In particular, we stated,

> "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."

Additionally, as noted above, Commerce did not have the necessary information upon which to base a finding of *de facto* specificity. For this reason, the GOC's argument that the MLWF industry did not consume a disproportionately large amount of electricity during the POR is misplaced. Because the GOC declined to provide all the requested information, Commerce only had partial information that could not provide a proper basis for an affirmative determination of specificity. Instead, we continued to find specificity within the meaning of section 771(5A) of the Act on the basis of AFA. Accordingly, in drawing an adverse inference from the provincial electricity tariff schedules on the record, Commerce identified the highest rates among the schedules for each reported electrical category and used those as the benchmarks in the benefit calculations.[28]

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[25] *See* GOC SQR at 4-5.
[26] *See* GOC IQR Electricity Appendix at 2.
[27] *Id.* at Exhibits E-8 and E-9.
[28] *See* PDM at 10.

For these same reasons, we find Fine Furniture's arguments, which essentially mirror those of the GOC, to be misplaced as well.

Comment 2: Electricity for LTAR-- Calculation Methodology

Fine Furniture Case Brief

Benefit & Benchmark

- Commerce's AFA benefit measurement method for Fine Furniture entailed creating a mix-and-match of rates from three different provinces in China, depending on which one had the highest rate for the specific electricity user/rate category required to be measured.
- Commerce imputed electricity rates from three different provinces in China to the same (stationary) Fine Furniture or Great Wood facility.
- Commerce must use benchmarks from only a single province for comparison in each of the four electricity categories.
- Commerce's electricity program calculation for Fine Furniture is inconsistent with the approach in the previous administrative review.
- Commerce improperly calculated Fine Furniture's electricity benefit by failing to recognize the difference between Fine Furniture's actual prices paid and the electricity benchmark prices.
- Commerce's zeroing of the difference between Fine Furniture's payment and the benchmark, instead of allowing for the negative value to factor into the overall benefit calculation, is unlawful and inconsistent with Commerce's prior practice.
- In its final results, Commerce should alter its approach by using the actual mathematical difference that results when subtracting Fine Furniture's payments from the calculated benchmark payments.
- Due to a translation error in the Zhejiang electricity schedule submitted by the GOC, Commerce used the wrong benchmark price for Great Wood 10KV and Great Wood 8KV.
- The translation error indicated that the Zhejiang electricity schedule stated the transformer capacity benchmark was 40 RMB, when actually, 40 RMB represents the price for maximum demand.
- The translation error is evident when comparing the Chinese characters for maximum demand and transformer capacity, and its correction involves factual information already on the record.
- Commerce must correct this error in its final results by using the accurate transformer capacity benchmark rate of 30 RMB for Great Wood 10KV and Great Wood 8KV.

VAT

- As requested by Commerce, Fine Furniture reported value-added tax (VAT)-exclusive electricity payments. The GOC reported VAT-inclusive prices which Commerce used as benchmarks for the *Preliminary Results*. In accordance with Department precedent, Commerce should adjust its comparison to facilitate an "apples to apples" comparison by removing the 17 percent VAT from the electricity benchmark.

- It is "more appropriate" to reduce the electricity benchmarks by 17 percent, versus increasing the prices Fine Furniture paid by 17 percent, because the addition of VAT is not an allowable adjustment under Commerce's regulations and distorts the comparison to the purchase price.
- Commerce did not include the most recent version of electricity usage in its calculation of Fine Furniture 10KV.
- The use of the updated electricity usage is important because it shows VAT-inclusive rates, which are comparable to the VAT-inclusive benchmarks used by Commerce and ensures an apples-to-apples comparison in all electricity categories.

Department Position:

Benefit & Benchmark

We disagree with Fine Furniture's arguments that Commerce should allow negative values in the benefit calculation to offset the overall benefit. The electricity for LTAR benefit and benchmark methodology applied in the *Preliminary Results* is consistent with Commerce's regulations and practice.[29] As Commerce explained in *Geogrid Products*, in a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions.[30] There is no offsetting credit for transactions that did not provide a subsidy benefit. Such an adjustment is not contemplated under the statute and is inconsistent with Commerce's practice.[31] Therefore, we have made no modifications to the final results calculations for Fine Furniture in terms of allowing "negative" values to offset the overall benefit. In this regard, while Jiangsu Senmao did not submit a case brief, Commerce finds that there was an inadvertent error in the preliminary benefit calculation for Jiangsu Senmao. Specifically, contrary to Commerce's long-standing practice, we mistakenly allowed negative values in the calculation to offset the overall benefit to Jiangsu Senmao, which we are correcting in the final results.[32]

We also disagree with Fine Furniture's argument that Commerce should derive all the benchmarks from the tariff schedule of one province. As discussed under Comment 1, due to the lack of cooperation from the GOC and the consequent lack of a reliable basis in the record to make an affirmative determination as to specificity, we are applying AFA with regard to our selection of benchmarks. Accordingly, as AFA, and in accordance with 19 CFR 351.511(a)(2), we selected the highest non-seasonal provincial rates in China for each user category (*e.g.*, "general," "industry," and "commerce") and voltage class of the respondents (*e.g.*, 1-10

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[29] *See, e.g., Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part,* 82 FR 3282 (January 11, 2017) (*Geogrid Products*), and accompanying Issues and Decision Memorandum (IDM) at Comment 8.
[30] *See Geogrid Products*, IDM at Comment 8.
[31] *Id.; see also Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005), and accompanying IDM at Comment 43.
[32] *See* Memorandum entitled "Final Results Calculations for Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.," dated June 8, 2018 (Jiangsu Senmao Final Calculations Memo), for further details on the updated calculations.

kilovolts), as well as the respondents' "base charge" (maximum demand and/or transformer capacity). We used these rates as our benchmarks to compare with the corresponding rates that the respondent companies actually paid during 2015. In this manner, we have used the actual usage information supplied by the respondent companies to measure the benefit; the selection of benchmarks is a consequence of the application of AFA with regard to the government information.

We otherwise agree with Fine Furniture regarding certain errors in the benefit calculation. For the final results, Commerce is incorporating the most recent version of electricity usage in its calculation of Fine Furniture's 10KV electricity usage category and updating the benchmark price for Great Wood's 10KV and 8K electricity usage categories. In our *Preliminary Results*, we inadvertently used the wrong version of electricity usage in our calculation of Fine Furniture's 10KV electricity usage category, and we used the wrong benchmark price for transformer capacity due to the translation error in the documents submitted by the GOC. For the final results, we have assigned the correct value for Fine Furniture's 10KV electricity usage category. We also corrected the benchmark price for transformer capacity for Great Wood's 10KV and 8KV and the benchmark price for transformer capacity for Jiangsu Senmao's 10KV electricity usage category to reflect the Beijing electricity schedule submitted by the GOC as it is now the highest benchmark price available.[33]

VAT

We agree with Fine Furniture that for the final determination Commerce should adjust its preliminary benefit calculation to ensure an "apples-to-apples" comparison.[34] Therefore, consistent with our past practice, for the final results, we are adjusting Fine Furniture's reported electricity purchases to include the 17 percent VAT, rather than excluding VAT from the benchmark prices, as argued by Fine Furniture.[35]

Pursuant to 19 CFR 351.511(a)(2)(iv), Commerce's tier-one and tier-two benchmark prices must be adjusted "to reflect the price a firm actually paid or would pay if it imported the product," including amounts for "delivery charges and import duties." The U.S. Court of International Trade has recently held that Commerce "properly observed its regulations and adjusted the benchmark price for {respondents' inputs} to account for the VAT and import duties that firms located in China, which purchased {said inputs}, would ordinarily have paid."[36] Here, Fine Furniture is located in China, and reported that it pays VAT on the purchases of its electricity,

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[33] *See* Memorandum entitled "Final Results Calculations for Fine Furniture (Shanghai) Limited, and Great Wood (Tonghua) Ltd.," dated June 8, 2018 (Fine Furniture Final Calculations Memo), for further details on the updated calculations. *See also* Jiangsu Senmao Final Calculations Memo.
[34] *See Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying IDM at Comment 8; *see also Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016), and accompanying IDM at Comment 8; *see also 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017), and accompanying IDM at Comment 1.
[35] *Id*.
[36] *See Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1375 (Ct. Int'l Trade 2015).

and our benchmark price includes VAT. Therefore, excluding VAT from Fine Furniture's electricity payments would not yield an "apples-to-apples" comparison with the electricity benchmark. Accordingly, we are including the VAT actually paid by Fine Furniture on its electricity purchases.

Comment 3: Countervailability of Allowance for Attorney's Fees Program

Fine Furniture Case Brief

- The Attorney's Fee benefit is not a countervailable subsidy and should be removed from Fine Furniture's CVD rate determination.
- In antidumping proceedings, Commerce does not subtract, from U.S. price, legal fees (and other expenses) associated with participation in antidumping duty (AD) proceedings, as these fees are incurred as a result of the AD order.
- As in an AD proceeding, the legal fees subsidized under this program are also incurred as the result of the existence of the CVD *Order* on MLWF from China and, therefore, Commerce should not review this program.
- Commerce's treatment of this program as a countervailable subsidy creates the need for more government assistance for participation in CVD proceedings and is, therefore, circular logic, *i.e.*, the subsidy exists because of Commerce's imposition of countervailing duties.
- If Commerce finds the Attorney's Fees Program countervailable, it must change its designation from a non-recurring benefit to a recurring benefit.
- Commerce regulations provides a non-binding illustrative list of examples of recurring and non-recurring benefits, and attorney's fees are not included on either list; however, attorney's fees are most like the examples of recurring benefits such as price support payments, export promotion assistance and worker assistance.
- Under the regulatory criteria in 19 CFR 351.524(c)(2), the Attorney's Fees Program should be considered recurring because the recipient can expect to receive additional subsidies under the same program on an ongoing basis from year to year, there is no evidence that the subsidy required or received the government's express authorization or approval, and the subsidy was not provided for, or tied to, the capital structure or capital assets of the firm.
- The attorney's fees benefit does not relate to renewable physical assets, so there is no reason to allocate benefits over the 10-year average useful life associated with Fine Furniture's renewable physical assets.
- Commerce must correct Fine Furniture's 2015 export sales value in the final results to reflect the value reported by Fine Furniture.

Department Position:

We disagree with Fine Furniture that the Attorney's Fees Program is not a countervailable subsidy. We further disagree with Fine Furniture that the Attorney's Fees Program must be designated as a recurring benefit. We continue to find that the Attorney's Fees Program is a countervailable subsidy, and that assistance under this program meets the criteria under 19 CFR 351.524(c)(2) for treatment as a non-recurring benefit.

Fine Furniture's argument with respect to the Allowance for Attorney's Fees Program conflates Commerce's practices in AD and CVD proceedings. Commerce's treatment of attorney's fees within the context of an AD proceeding is not analogous to, and has no bearing on, our treatment of a government grant to cover those fees in a CVD proceeding. These are separate proceedings that provide separate remedies for distinct unfair trade practices, and each is governed by separate provisions of the Act and regulations. Accordingly, Commerce's analyses are tailored to remedy the unfair trade practice under review. Antidumping duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. Commerce's AD practice is not to adjust U.S. prices or a respondent's cost of production to account for attorney's fees that the company incurs because those fees are not business expenses that arise from the ordinary course of economic activities. This practice solely pertains to determining the correct price of the company's goods for AD calculations, and it is irrelevant to findings on the CVD side as to whether a government grant provided to cover those fees constitutes a subsidy under the Act and Commerce's regulations. As we fully explained in the *Preliminary Results*, this grant satisfies all of the elements to find a subsidy countervailable within the meaning of sections 771(5)(D)(i) and 771(5A)(B) of the Act.[37] Commerce has consistently treated similar grants for legal fees to be countervailable.[38] Fine Furniture does not contest that it was reimbursed for its attorney's fees in the form of this grant. Therefore, for the final results, we are not amending our countervailability finding as to this program.

Further, Fine Furniture's arguments regarding the criteria for determining a recurring benefit are misplaced. The designation of the allowance for attorney's fees as a non-recurring benefit, as applied in the *Preliminary Results*, is consistent with the regulations and Commerce's practice.[39] Despite Fine Furniture's argument of Commerce regulations not explicitly listing attorney's fees as either a recurring or non-recurring benefit, 19 CFR 351.524(c) clearly shows that grants are among the types of subsidies that "the Secretary normally will treat . . . as providing non-recurring benefits . . .." Fine Furniture reported that it received payment from the Shanghai Municipal Commission of Commerce during the POR and since 2011, but that Fine Furniture does not receive the payment on an ongoing basis.[40] Therefore, while the program may operate on an annual basis, record information does not support finding that the company automatically receives subsequent payments. Further, Fine Furniture stated that it did not have knowledge of the application or approval process and does not maintain the application or approval documents related to the payment, but that such payment is for the provision of proprietary information and sharing of opinion regarding Fine Furniture's ongoing antidumping, countervailing duty, and sunset review cases.[41] The GOC also confirmed that Fine Furniture received certain amounts

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[37] *See Preliminary Results* at 15.

[38] *See, e.g., Melamine from the People's Republic of China, Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 21706 (April 20, 2015), and accompanying PDM at 24; *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2013*, 81 FR 1169 (January 11, 2016), and accompanying PDM.

[39] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2013*, 81 FR 1169 (January 11, 2016), and accompanying PDM at 13, unchanged in the Final Decision.

[40] *See* Fine Furniture's May 12, 2017 Initial Questionnaire Response at 15.

[41] *Id.*

under this program.[42] Lastly, Fine Furniture's argument that attorney's fees benefit does not relate to physical assets and, for that reason, should not be allocated, is misplaced. While a benefit tied to capital assets is indeed considered non-recurring, that is not the sole criterion for determining that a subsidy is non-recurring. Therefore, for the final results, we continue to find that the Attorney's Fees Program confers a non-recurring benefit that is allocable over the AUL.

We do, however, agree with Fine Furniture that for the final determination we should correct Fine Furniture's 2015 export sales value to reflect the value it reported. In our *Preliminary Results*, we inadvertently used the wrong value for export sales to calculate the benefit rate under the program. For the final results, we have assigned the correct value for export sales, as provided by Fine Furniture.

Comment 4: Whether to Assign Non-Selected Company Rate to Dun Hua Sen Tai Wood

Dun Hua Sen Tai Wood's Case Brief

- Commerce inadvertently left Dun Hua Sen Tai Wood's name off the list of non-selected companies receiving a rate in the *Preliminary Results*.
- Commerce must assign a rate given to non-selected companies in the final results.

Department Position:

We agree with Dun Hua Sen Tai Wood. We included Dun Hua Sen Tai Wood in our initiation of this review,[43] and Dun Hua Sen Tai Wood did not withdraw its request for a review. In our *Preliminary Results*, we inadvertently omitted Dun Hua Sen Tai Wood from the list of non-selected companies. For the final results, we are restoring Dun Hua Sen Tai Wood to the list of non-selected respondents in this review and assigning it the non-selected rate of 0.85 percent.

[42] *See* GOC IQR at 1.
[43] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457, 10463 (February 13, 2017).

XII. CONCLUSION

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

☒ Agree ☐ Disagree

6/8/2018

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