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DATE: July 18, 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: Issues and Decision Memorandum: Multilayered Wood Flooring from the People's Republic of China; 2015-2016

I. SUMMARY

The Department of Commerce (Commerce) published the *Preliminary Results* of the administrative review of the antidumping duty (AD) order on multilayered wood flooring (MLWF) from the People's Republic of China (China) on January 16, 2018.[1] The period of review (POR) is December 1, 2015, through November 30, 2016. We have analyzed the arguments presented in the case and rebuttal briefs, and have made certain changes to the *Preliminary Results*. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a list of the issues raised in the comments we received from interested parties:

Comment 1: Whether Commerce Improperly Selected Jinqiao Flooring as a Mandatory Respondent
Comment 2: Whether Jinqiao Flooring is Entitled to a Separate Rate
Comment 3: Whether Jinqiao Flooring is Entitled to a Calculated Margin
Comment 4: Whether to Allow, and How to Value Jiangsu Senmao's By-Product Offset
Comment 5: How to Value Jiangsu Senmao's Wood Veneers

[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015–2016*, 83 FR 2137 (January 16, 2018) (*Preliminary Results*) and accompanying Memorandum, "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China; 2015-2016" (Preliminary Decision Memorandum).

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Comment 6: Whether to Remove Baishan Huafeng Wood Product Co., Ltd. from the China-Wide Entity
Comment 7: Whether to Remove Guangdong Yihua Timber Industry Co., Ltd. from the China-Wide Entity
Comment 8: Whether to Amend Commerce's Draft Liquidation Instructions to Identify an Injunction Applicable to Entries Made by Fine Furniture (Shanghai) Limited

II. BACKGROUND

In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on the *Preliminary Results*. On February 19, 2018, Baishan Huafeng Wooden Product Co., Ltd. (Baishan Huafeng) submitted a case brief.[2] Yihua Lifestyle Technology Co., Ltd. (Yihua Tech), Fine Furniture (Shanghai) Limited (Fine Furniture), the Coalition for American Hardwood Parity (the petitioners), and Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. (Jinqiao Flooring) filed case briefs on February 28, 2018.[3] The petitioners and Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Jiangsu Senmao) submitted rebuttal briefs on March 12, 2018.[4] Also on March 12, 2018, in lieu of a rebuttal brief, Lumber Liquidators Services, LLC (Lumber Liquidators) submitted a letter indicating that it incorporates, by reference, the arguments made by the respondents in their case and rebuttal briefs.[5]

III. SCOPE OF THE ORDER[6]

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[7] in combination with a core.[8] 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* Baishan Huafeng's Letter, "Multilayered Wood Flooring from the PRC: Case Brief of Baishan Huafeng Wooden Product Co., Ltd.," dated February 19, 2018 (Baishan Huafeng's Case Brief).
[3] *See* Yihua Tech's Letter, "Multilayered Wood Flooring from the People's Republic of China: Case Brief of Yihua Lifestyle Technology Co., Ltd., Successor-in-Interest to Guangdong Yihua Timber Industry Co., Ltd." (Yihua Tech's Case Brief); Fine Furniture's Letter, "Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Case Brief for Consideration Prior to the Final Results" (Fine Furniture's Case Brief); Petitioners' Letter, "Multilayered Wood Flooring from the People's Republic of China" (Petitioner's Case Brief); and Jinqiao Flooring's Letter, "Multilayered Wood Flooring from the People's Republic of China: Submission of Administrative Case Brief," (Jinqiao Flooring's Case Brief) all dated February 28, 2018.
[4] *See* Petitioners' Letter, "Multilayered Wood Flooring from the People's Republic of China," (Petitioner's Rebuttal Brief) and Letter from Jiangsu Senmao, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal Case Brief," (Jiangsu Senmao's Rebuttal Brief) both dated March 12, 2018.
[5] *See* Lumber Liquidators' Letter, "Letter in Lieu of Rebuttal Brief Multilayered Wood Flooring from the People's Republic of China," dated March 12, 2018.
[6] *See 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).
[7] 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.
[8] Commerce Interpretive Note: Commerce 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.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Improperly Selected Jinqiao Flooring as a Mandatory Respondent

Jinqiao Flooring's Arguments[9]

- Commerce improperly selected Jinqiao Flooring as a mandatory respondent in this administrative review, as the CBP data it used as the basis of respondent selection was extremely unreliable.
- Certain companies advised Commerce that the CBP export data it relied on to make its respondent selection determination was "incorrect and vastly overstated." For these companies, Commerce relied on their actual export volumes in lieu of the CBP export data.
- Upon being selected as a mandatory respondent, Jinqiao Flooring provided its export volumes which showed that the CBP export data for it was also overstated, and Jinqiao Flooring therefore requested that Commerce deselect Jinqiao Flooring as a mandatory respondent.

Petitioners' Rebuttal[10]

- Jinqiao Flooring was properly selected as a mandatory respondent in this administrative review, as Commerce released CBP data to interested parties and requested comments on these data prior to its selection of mandatory respondents.
- Jinqiao Flooring only objected to the accuracy of the export data and provided its actual export data after it was selected by Commerce as a mandatory respondent, *i.e.*, after the time frame set aside for comments.
- Having failed to present an objection to the use of CBP data for mandatory respondent selection purposes or provide its own certified quantity and value data within the time frame set aside for such comments, Jinqiao Flooring's objection was correctly denied by Commerce.

[9] *See* Jinqiao Flooring's Case Brief at 13 – 14.
[10] *See* Petitioners' Rebuttal Brief at 1 – 2.

Commerce's Position: We agree with the petitioners. On February 27, 2017, we placed CBP entry data for the POR on the record and invited comments on the data from interested parties by March 9, 2017.[11] We received Jinqiao Flooring's comments regarding the CBP data on April 12, 2017, well after the March 9, 2017 deadline.[12] We rejected Jinqiao Flooring's submission as untimely, noting in our letter that Jinqiao Flooring submitted its comments after the respondent selection process had been completed.[13] As respondent selection decisions must be made early in the proceeding, raising this issue for the first time in its case brief is unavailing. Jinqiao Flooring did not then, nor does it now, contest the rejection of its submission. Absent any timely submitted information challenging the CBP data with respect to Jinqiao Flooring, we reasonably relied on the CBP data in selecting Jinqiao Flooring as a mandatory respondent in this administrative review.

Comment 2: Whether Jinqiao Flooring is Entitled to a Separate Rate

Jinqiao Flooring's Arguments[14]

- Commerce's presumption of government control, by reason of direct or indirect government share ownership, is rebutted by the factual record of this administrative review; therefore, Jinqiao Flooring is entitled to a separate rate.
- Jinqiao Flooring negotiated independently with U.S. customers; sales managers had contractual authority to bind the company; and senior managers were selected by the Board of Directors and the Jinqiao Flooring Labor Union (Labor Union).
- The record demonstrates that the Chinese government did not control Jinqiao Flooring during the POR. Rather, the Labor Union, through its control of the Board of Directors and the Board of Supervisors, controlled the company during the POR.
- According to Jinqiao Flooring's Articles of Association, the Board of Directors is the management decision-making body of the company. The Articles of Association provide that three of the five Board members are to be elected by the Labor Union, which establishes the Labor Union as the entity that exercises operational control of the Board.
- Commerce's preliminary finding that a two-member minority of Board members controls the Board is nonsensical and takes the Articles of Association out of context. Moreover, Commerce incorrectly stated that the Board reports to the shareholders.

Petitioners' Rebuttal[15]

- The petitioners agree with Jinqiao Flooring's arguments and interpretation of the factual information on the record and submit that Jinqiao Flooring should be accorded "separate rate" status in the final results of this review.
- The petitioners note that Jinqiao Flooring was accorded "separate rate" status in each of the four preceding administrative reviews of the subject antidumping duty order.

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[11] *See* Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Antidumping Duty Administrative Review; Release of Customs and Border Protection Data," dated February 27, 2017.
[12] *See* Jinqiao Flooring's Letter, "Multilayered Wood Flooring from the People's Republic of China; Request that the Department Deselect Jinqiao Group as a Mandatory Respondent," dated April 12, 2017.
[13] *See* Commerce Letter, "Re: Multilayered Wood Flooring (Wood Flooring) from the People's Republic of China (the PRC): Respondent Selection," dated April 18, 2017.
[14] *See* Jinqiao Flooring's Case Brief at 2 – 9.
[15] *See* Petitioners' Rebuttal Brief at 3 – 5.

- Majority ownership by a government entity of a Chinese producer/exporter does not *ipso facto* direct an immutable conclusion that the government exercises *de facto* control over the company's export activities.
- Rather, Commerce's preliminary finding is rooted in a presumption; specifically, that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over that company's operations generally.
- However, any presumption can, and in appropriate cases, should be overcome by the record evidence. Here, Jinqiao Flooring provides substantial evidence that should overcome any presumption of *de facto* government control.

Commerce's Position: We disagree with Jinqiao Flooring and the petitioners, and we continue to find that Jinqiao Flooring is not eligible for a separate rate. In the *Preliminary Results*, we determined that Jinqiao Flooring did not demonstrate an absence of *de facto* government control, as it is an entity that is majority-owned by the Chinese government. Our determination was based on facts that are subject to the administrative protective order of this administrative review; therefore, we addressed this matter in a business proprietary Separate Rate Analysis Memorandum.[16]

In the *Preliminary Results*, we explained that, in proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the NME are subject to government control and, thus, should be assessed a single antidumping duty rate.[17] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate-rate status in NME proceedings.[18] It is Commerce's policy to assign all exporters of merchandise under review that are in an NME country a single weighted-average dumping margin unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate.[19]

Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent from government control under a test arising from *Sparklers*,[20] as further developed in *Silicon Carbide*.[21] In accordance with this test, Commerce assigns separate rates to exporters in

[16] *See* Memorandum, "Preliminary Separate Rate Analysis Memorandum for Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.," dated January 2, 2018 (Separate Rate Analysis Memorandum).
[17] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances. In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of Chin*a, 71 FR 29303, 29307 (May 22, 2006).
[18] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017). *See also Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 57705 (December 7, 2017)
[19] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*); *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-89 (May 2, 1994) (*Silicon Carbide*).
[20] *See Sparklers*, 56 FR at 20588.
[21] *See Silicon Carbide*, 59 FR at 22586-89.

NME proceedings if exporters can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.[22]

In recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations. This may include control over, for example, the selection of management, which is a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.[23] Consistent with normal practice, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Therefore, in assessing the degree of government control over Jinqiao Flooring, we analyzed the level of government ownership of Jinqiao Flooring.

In the *Preliminary Results*, we found, after a review of each owner's capital verification report, that the majority of Jinqiao Flooring's shares are held by a state-owned enterprise (SOE).[24] Jinqiao Flooring does not dispute this key fact. Rather, Jinqiao Flooring simply reiterates arguments it made before the *Preliminary Results* as to why it is not controlled by the government.[25] For example, Jinqiao Flooring restates that its Articles of Association establish that three of five members of the Board of Directors are elected by the Jinqiao Flooring Labor Union, a non-governmental organization.[26] This example, according to Jinqiao Flooring, demonstrates that it is free from the control, supervision, or interference of any government entity.[27] Jinqiao Flooring's reiterated arguments are not responsive to Commerce's separate rate analysis. The crux of

[22] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

[23] *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 75 (January 4, 2016) and accompanying Preliminary Decision Memorandum (PDM) at 15*;* unchanged in final *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35316 (June 2, 2016); *see also 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 81 FR 69786 (October 7, 2016) and accompanying PDM at 17, unchanged in final *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 Issues and Decision Memorandum (IDM) at 12-16 (*Tetrafluoroethane)*; *see also Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination in the Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying IDM at Comment 8.

[24] *See* Separate Rate Analysis Memorandum at 5 – 6.

[25] *See* Jinqiao Flooring Case Brief at 3. *See also* Jinqiao Flooring's Letter, "Multilayered Wood Flooring from the People's Republic of China; Submission of Fourth Supplemental Response," dated September 29, 2017 (Jinqiao Flooring September 29, 2018 SQR4).

[26] *See* Jinqiao Flooring's Case Brief at 3 – 4.

[27] *Id*. at 5. We note that Jinqiao Flooring discounts the importance of the fact that two members of the Board of Directors are elected by the SOE, and there is no evidence to suggest those members are merely placeholders. Indeed, as professed by Jinqiao Flooring, the Board of Directors controls the management and operations of the company. Further, the notion that three members of the Board of Directors act completely autonomously from the two other members simply ignores normal business practices.

Commerce's separate rate analysis centers on the implications of majority government ownership *i.e.*, a potential, ability, interest, *etc*. to control the company. Jinqiao Flooring's arguments fail to resolve these notable implications of the SOE's ownership.

Additionally, Jinqiao Flooring argues that Commerce incorrectly stated that the Board of Directors reports to the shareholders. However, Jinqiao Flooring itself states, "Article 24 of [sic] provides a list of functions and powers that are exercised by the Board of Directors. The first enumerated power is to '{c}onvene the shareholders' meeting *and report to it*'."[28] Therefore, Jinqiao Flooring does not dispute that the Board of Directors reports to the shareholders, and it was not incorrect for Commerce to consider this fact when assessing the level of government control over operations.

Finally, pursuant to section 771(18)(C)(ii) of the Act, Commerce has conducted an inquiry into China's status as an NME in connection with the less-than-fair-value investigation of aluminum foil from China.[29] In evaluating the extent to which wage rates in China are determined by free bargaining between labor and management, Commerce has concluded that "{l}abor unions are under the control and direction of the All-China Federation of Trade Unions (ACFTU), a government-affiliated and CCP organ."[30] This determination is not undermined by Jinqiao Flooring's excerpts from the Trade Union Law and assertion that the labor union is not under government ownership.[31] Therefore, Jinqiao Flooring's reliance on the labor union's control over the selection of management does not rebut the finding of government control.

In sum, Jinqiao Flooring's arguments and the corporate documentation upon which Jinqiao Flooring relies on, fail to directly rebut Commerce's preliminary separate rate analysis and we therefore continue to find that Jinqiao Flooring is not eligible for a separate rate.

Comment 3: Whether Jinqiao Flooring is Entitled to an Individually-Calculated Rate

Jinqiao Flooring's Arguments[32]

- If Commerce continues to find that Jinqiao Flooring is not eligible for a separate rate, it should calculate an individual rate for Jinqiao Flooring based on its reported data, as the facts in this review are "virtually identical" to those in *China Manufacturers*.[33] In that case, the Court of International Trade (CIT) held that a cooperative mandatory respondent is entitled to an individually-calculated weighted average dumping margin despite being

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[28] *See* Jinqiao Flooring's Case Brief at 5 – 6.
[29] *See Certain Aluminum Foil from the People's Republic of China: Notice of Initiation of Inquiry Into the Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws*, 82 FR 16162 (April 3, 2017) (*NME Inquiry Initiation*); *see also Certain Aluminum Foil from the People's Republic of China: Notice of Extension of Time for Public Comment Regarding Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws*, 82 FR 20559 (May 3, 2017).
[30] *See* Memorandum, "Aluminum Foil from the People's Republic of China: China's Status as a Non-Market Economy," dated October 26, 2017 (China NME Status Memorandum) at page 5.
[31] *See* Jinqiao Flooring's Letter, "Multilayered Wood Flooring from the People's Republic of China; Submission of Second Supplemental Response," dated August 31, 2018.
[32] *See* Jinqiao Flooring's Case Brief at 9 – 13.
[33] *See China Manufacturers Alliance, LLC v. United States*, 205 F.Supp.3d 1325 (CIT 2017) (*China Manufacturers).*

unable to demonstrate the absence of government control.

- As an alternative to *China Manufacturers*, which is still pending, Commerce should at a minimum adopt a methodology similar to that used in *Diamond Sawblades*.[34] In that case, the Court of Appeals for the Federal Circuit (CAFC) affirmed Commerce's decision to recalculate the China-wide rate by averaging the calculated rate of a respondent who failed to qualify for a separate rate with the previously assigned China-wide rate.

Petitioners' Rebuttal[35]

- Should Commerce not accord separate rate status to Jinqiao Flooring, Commerce must still assign it a calculated margin based on its reported data, as the facts in this case are virtually identical to those in *China Manufacturers*.
- Notwithstanding the fact that *China Manufacturers* remains pending, the decision is an "effectively clear and unambiguous judicial direction" that where a company is selected as a mandatory respondent and otherwise cooperates fully in the review, it must be assigned a calculated margin based on its own information.

Commerce's Position: We disagree with the parties' reliance on *China Manufacturers* and *Diamond Sawblades*. In *China Manufacturers*, Commerce determined that the respondent was a state-owned enterprise (SOE), and assigned this respondent a rate consisting of a simple average of the China-wide rate and the rate calculated using the respondent's reported data. The CIT ruled that section 776(b) of the Act required Commerce to assign the respondent an individual weighted-average dumping margin, *i.e.*, exclusive of the China-wide rate, because Commerce selected the company as a mandatory respondent and because the respondent was cooperative.[36] The CIT reasoned, *inter alia*, that the China-wide rate bore no relationship to the underlying administrative review and, further, use of the China-wide rate was invalid as it was based on facts available with adverse inferences.[37] On remand, the CIT instructed Commerce to assign the respondent the rate calculated from the respondent's own data exclusive of the China-wide rate.[38]

As acknowledged by Jinqiao Flooring and the petitioners, a final Court decision in *China Manufacturers* is still pending. Further, we complied with the CIT's order in that case under protest.[39] Thus, the matter of *China Manufacturers* is not conclusive, and does not obligate Commerce to assign Jinqiao Flooring an individually-calculated weighted-average dumping margin.

The parties' reliance on *Diamond Sawblades* is misplaced, as *Diamond Sawblades* supports Commerce's determination that Jinqiao Flooring is to be assigned the China-wide rate. As in *China Manufacturers*, in the underlying administrative review for *Diamond Sawblades*, Commerce

[34] *See Diamond Sawblades Manufacturers Coalition v. United States*, 866 F.3d 1304 (CACF 2017) (*Diamond Sawblades*).
[35] *See* Petitioners' Rebuttal Brief at 6 – 8.
[36] *See China Manufacturers*, 205 F.Supp.3d at 1338.
[37] *Id*. at 1337.
[38] *Id*. at 1364.
[39] *See* Remand Memorandum, "*China Manufacturing Alliance, LLC, et al. v. United States* Consol. Court No. 15-00124; Slip Op. 17-12 (CIT 2017)," ACCESS Barcode: 3583662, available at: https://enforcement.trade.gov/remands.

determined that the respondent was an SOE.[40] Similarly, Commerce assigned that respondent the simple average of the China-wide rate and the rate calculated using the respondent's reported data.[41] However, unlike *China Manufacturers*, the CAFC in *Diamond Sawblades* affirmed Commerce's assignment of this rate to the respondent.[42] In resolving the argument that the respondent should not be subject to the AFA-based China-wide rate at all, the CAFC considered *China Manufacturers*, and stated that the CIT's analysis "does not properly apply our precedent upholding Commerce's use of a {China-wide entity rate} for companies that fail to rebut the presumption of government control and is incompatible with the underlying {non-market economy} presumption."[43]

Moreover, unlike in the underlying proceedings in *China Manufacturers* and *Diamond Sawblades*, the instant administrative review was initiated after Commerce's change in practice with respect to the conditional review of the non-market economy entity.[44] Because no party requested a review of the China-wide entity, we did not conduct a review of the China-wide entity in this case, and thus, the methodology employed in *Diamond Sawblades* would not apply here.[45]

Because Jinqiao Flooring has failed to rebut the presumption of government control, it is subject to the same rate applicable to all members of the China-wide entity that have not proven their independence from the state. Therefore, we have not calculated an individual margin for Jinqiao Flooring for the final results.

Comment 4: Whether to Allow, and How to Value, Jiangsu Senmao's By-Product Offset

Petitioners' Arguments[46]

- Commerce should deny Jiangsu Senmao an offset for wood scrap by-products because Jiangsu Senmao reported that it did not track the quantity of the wood scrap by-product it produced during the POR.
- In the 2012-2013 administrative review, Commerce denied Jiangsu Senmao's claimed wood scrap by-product offset because Jiangsu Senmao did not demonstrate that it produced wood scrap as a by-product.
- In the 2012-2013 review, the petitioners noted that the wood scrap sold by Jiangsu Senmao during the prior POR was in the form of saw dust.
- Jiangsu Senmao did not report the specific type of by-product wood scrap it produced during this POR.
- If Commerce continues to grant Jiangsu Senmao a by-product offset in the final results, Commerce should use HTS category 4401.39.30, "Other: Sawdust" to value the by-product rather than HTS category 4401.22.00, "Wood in chips or particles: Non-coniferous," which Commerce used to value the by-product for the *Preliminary Results*.

[40] *See Diamond Sawblades*, 866 F.3d at 1308.
[41] *Id*. at 1309.
[42] *Id*.
[43] *Id*. at 1313 and note 6.
[44] *See Preliminary Results*, and accompanying PDM at 12.
[45] *Id*.
[46] *See* Petitioners' Case Brief at 1 – 4.

Jiangsu Senmao's Rebuttal[47]

- The petitioners' reliance on the 2012-2013 administrative review is misplaced, as Commerce verified Jiangsu Senmao's questionnaire responses in the previous (2014-2015) review and determined that a by-product offset was appropriate. The petitioners have pointed to no new facts nor raised any new arguments to justify Commerce's reconsideration of its preliminary decision to grant a by-product offset.
- In the previous review, Commerce rejected the petitioners' arguments for using HTS category for sawdust to value Jiangsu Senmao's by-product. The petitioners' assertion that Jiangsu Senmao's by-product consisted of sawdust during the current POR has no factual basis.
- The petitioners have pointed to no new facts, nor raised any new arguments to justify Commerce's reconsideration of its preliminary valuation of Jiangsu Senmao's by-product using HTS category 4401.22.00 for the final results.

Commerce's Position: We agree with Jiangsu Senmao that it is entitled to a by-product offset, and that the reported by-product is best valued using HTS category 4401.22.00 (Wood in chips or particles: Non-coniferous).[48] Although we did not conduct verification of Jiangsu Senmao's questionnaire responses during this segment of the proceeding, we did so during the immediately preceding (*i.e.*, the 2014-2015) review. Specifically, in the 2014-2015 review, we stated that, "{a}t verification, {Commerce} not only observed how wood scrap was generated and collected, but also how the reported by-product (*i.e.*, wood scrap) sales could be tied to the sales general ledger for other income with sales invoices, sales VAT invoices, receipts, accounting vouchers, and warehouse-in/out slips."[49] We further stated that "{b}ecause Senmao's face veneers, cores, and back veneers are all constructed from non-coniferous woods, {Commerce} has determined that Romanian HTS 44012200 (Wood in chips or particles: Non-coniferous) provides more specificity and the most similar comparison to Senmao's wood scrap."[50] As there is no contradictory information on the record of this review to warrant departure from our prior determination, we made no changes from the *Preliminary Results* with respect to Jiangsu Senmao's by-product offset.

Comment 5: How to Value Jiangsu Senmao's Wood Veneers

Petitioners' Arguments[51]

- In the 2014-2015 administrative review, Commerce noted that, as a result of verification, "the wood veneers used {by Jiangsu Senmao} … appeared to be a finished product that may be planed or sanded."
- HTS 44089015 is the only HTS to include planed, sanded, or end-jointed non-coniferous, non-tropical wood veneers. The remaining three HTS categories within Romanian HTS 440890 are non-planed, non-sanded, and non-end-jointed veneers.
- Therefore, for the final determination, Commerce should value Jiangsu Senmao's wood veneers with HTS 44089015, "Other: Planed; sanded; end-jointed, whether or not planed or

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[47] *See* Jiangsu Senmao's Rebuttal Brief at 1 – 3.
[48] *See Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 22311, and accompanying IDM at Comment 13.
[49] *Id.*
[50] *Id.*
[51] *See* Petitioners' Case Brief at 4 – 8.

sanded."

- In the alternative, in the 2013-2014 AR, Commerce valued all of Fine Furniture's (a mandatory respondent in that administrative review) veneers with the simple average of planed, sanded, or end-jointed face along with another category covering veneers of the certain dimensions.
- Accordingly, if Commerce determines that Jiangsu Senmao's veneers included both planed/sanded and non-planed/non-sanded veneers, Commerce should use the simple average of the surrogate values for planed/sanded veneers and non-planed/non-sanded veneers of the appropriate dimensions.

Jiangsu Senmao's Rebuttal[52]

- The petitioners rehash arguments that were rejected in the 2014-2015 administrative review in which Commerce conducted verification and determined that the proper valuation for Senmao's veneers include the Romanian HTS for non-sanded and non-planed veneer sheets.
- The approach taken in the *Preliminary Results* is consistent with Commerce's verification findings and the valuation methodology used in the 2014-2015 administrative review. The petitioners have pointed to no new evidence that would justify Commerce's reconsidering its prior finding on this issue.

Commerce's Position: For the final results, Commerce continues to value Jiangsu Senmao's veneers with Romanian HTS for non-sanded and non-planed veneer sheets. In the 2014-2015 AR, we determined, *inter alia*, that Jiangsu Senmao provided evidence that its veneers are non-planed and non-sanded and, during verification, we observed the veneers undergo planing and sanding.[53] We have similarly determined that it was inappropriate to use a simple average of planed or sanded wood and non-planed and sanded wood veneers.[54] In the current review, there is no new information that warrants departure from our prior determination and, therefore, the *Preliminary Results*.

Comment 6: Whether to Remove Baishan Huafeng Wood Product Co., Ltd. from the China-Wide Entity

Baishan Huafeng's Arguments[55]

- In the *Preliminary Results*, Commerce correctly determined that "Baishan Huafeng Wooden Product Co., Ltd." was eligible for a separate rate. However, Commerce also included, as part of the China-wide entity, "Baishan Huafeng Wood Product Co., Ltd.," a non-existent entity that is a misspelled variant of Baishan Huafeng's name. Baishan Huafeng has provided the correct spelling of its name.
- In past segments, Commerce's inclusion of "Baishan Huafeng Wood Product Co., Ltd." has been addressed by removing this non-existent entity from the China-wide entity.
- To avoid unnecessary confusion with the U.S. Customs and Border Protection (CBP), for the final determination, Commerce should remove "Baishan Huafeng Wood Product Co.,

[52] *See* Jiangsu Senmao's Rebuttal Brief at 3 – 5.
[53] *Id.* at Comment 11.
[54] *Id.*
[55] *See* Baishan Huafeng's Case Brief 1 – 5.

Ltd." from the China-wide entity.

Petitioners' Rebuttal[56]

- The petitioners inadvertently included an erroneous variant of Baishan Huafeng's name in its request for administrative review, and took care in its request for the sixth administrative review to avoid repeating this error.

Commerce's Position: We agree with Baishan Huafeng. In its request for this administrative review, the petitioners erroneously listed "Baishan Huafeng Wood Product Co., Ltd." as a company to be reviewed,[57] and this name was likewise erroneously listed in the *Initiation Notice* and the *Preliminary Results*.[58] In previous segments of this proceeding in which this issue occurred, we have corrected the record by removing "Baishan Huafeng Wood Product Co., Ltd." from the China-wide entity.[59] We acknowledge that Baishan Huafeng advised Commerce of this error in its separate rate application.[60] Thus, as in previous proceedings, we have removed the variant spelling from the list of companies included in the China-wide entity.

Comment 7: Whether to Remove Guangdong Yihua Timber Industry Co., Ltd. from the China-Wide Entity

Yihua Tech's Arguments[61]

- In the *Preliminary Results*, Commerce correctly determined that Yihua Tech was eligible for a separate rate. However, without issuing a deficiency questionnaire and without explanation, Commerce included Guangdong Yihua Timber Industry Co., Ltd. in the list of companies not entitled to a separate rate.
- In a changed circumstances review, Commerce determined that Yihua Tech is the successor-in-interest of Guangdong Yihua Timber Industry Co., Ltd. (Yihua Timber).[62]
- Commerce's practice in administrative reviews that are in progress contemporaneously with a successor-in-interest changed circumstances review is to include reference to the former entity along with the new entity in the table of companies entitled to a separate rate.[63]

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[56] *See* Petitioners' Rebuttal Brief at note 18.
[57] *See* Petitioners' Letter, "Request for Administrative Review: Multilayered Wood Flooring (rom the People's Republic of China," dated December 30, 2016.
[58] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457, 10460 (February 13, 2017); *see also Preliminary Results*.
[59] *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Correction to the Final Results of Antidumping Duty Administrative Review*, 80 FR 52447 (August 31, 2015), and *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46899 (July 19, 2016), and accompanying IDM at comment 11.
[60] *See* Baishan Huafeng's Letter, "Multilayered Wood Flooring from the PRC: Separate Rate Application of Baishan Huafeng Wooden Product Co., Ltd. and Dalian Guhua Wooden Product Co., Ltd. (the Huafeng Group)," dated March 15, 2017.
[61] *See* Yihua Tech's Case Brief at 1 – 7.
[62] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review*, 82 FR 14691 (March 22, 2017).
[63] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying IDM at Comment 5.

- Yihua Tech's separate rate certification provides all necessary information for Commerce to make a separate rate determination for Yihua Tech, both before and after its name change.
- For the final determination, Commerce should remove Yihua Timber from the China-wide entity and refer to it in the list of companies receiving a separate rate as the former name of Yihua Tech.

Commerce's Position: We agree with Yihua Tech that Commerce has previously determined that Yihua Tech is the successor-in-interest to Yihua Timber.[64] In that determination, we stated that "we will instruct U.S. Customs and Border Protection to collect estimated AD and CVD duties for all shipments of subject merchandise exported by Yihua Tech and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the Federal Register at the current AD and CVD cash deposit rates for Yihua Timber."[65] Further, we acknowledge that we found Yihua Tech to be eligible for a separate rate in the *Preliminary Results*. Accordingly, for the final results, we removed Yihua Timber from the China-wide entity and included it along with Yihua Tech as that company's former name. Our liquidation instructions to CBP will reflect this determination.

Comment 8: Whether to Amend Commerce's Draft Liquidation Instructions to Identify an Injunction Applicable to Entries Made by Fine Furniture

Fine Furniture's Arguments[66]

- Commerce failed to identify, in its draft liquidation instructions, an injunction applicable to Fine Furniture's entries of MLWF.
- To preserve Fine Furniture's injunction and avoid the unlawful collection of duties in the event that a non-*de minimis* rate is assessed for the separate rate respondents in the final results, Commerce must correct its draft liquidation instructions.

Commerce's Position: In light of the partial rescission of the administrative review with respect to Fine Furniture, consistent with the *Federal Register* notice accompanying these final results, we intend to issue CBP instructions accounting for a final court decision in *Changzhou Hawd Flooring Co., Ltd., et al. v. United States*, at a later time.[67]

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[64] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review*, 82 FR 14691 (March 22, 2017).
[65] *Id*.
[66] *See* Fine Furniture's Case Brief at 1 – 4.
[67] *See Changzhou Hawd Flooring Co., Ltd., et al. v. United States*, --- F. Supp. 3d---, 2018 WL 3322918 (CIT July 3, 2018).

V. **RECOMMENDATION**

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

☒ ☐

Agree Disagree

7/18/2018

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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