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MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Wooden Bedroom Furniture from the People's Republic of China: Analysis of Ministerial Error Allegations

Summary

American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. ("Petitioners"), Fujian Lianfu Forestry Co./Fujian Wonder Pacific Inc./Fuzhou Huan Mei Furniture Co., Ltd./Jiangsu Dare Furniture Co., Ltd. ("Dare Group"), Shanghai Aosen Furniture Co., Ltd. ("Shanghai Aosen"), and Kunwa Enterprise Company ("Kunwa") have alleged that the Department of Commerce ("Department") made ministerial errors in the calculation of its amended final results in the above-captioned administrative review. We recommend finding that the allegations raised by Petitioners, Shanghai Aosen, and Kunwa constitute ministerial errors within the meaning of the Department's regulations, and that the Department will make a second amendment to the final results of the review to correct these errors. The following issues are detailed below:

Comment 1: Treatment of "Contract Manufacturing" in Ahuja's Surrogate Financial Ratios
Comment 2: Shanghai Aosen's Conversion Factors for Ash, Birch, and Pine Veneers
Comment 3: Surrogate Value for Dare Group's Inputs of CURVINGWOODDY and VENEERPLY
Comment 4: Kunwa's Separate Rate Status
Comment 5: Comments Submitted by Petitioners that Do Not Meet the Regulatory Definition of Comments Regarding Ministerial Errors

Legal Authority

The provision of the Tariff Act of 1930, as amended ("Act"), governing the correction of ministerial errors directs the Department to establish a procedure for the correction of ministerial errors in determinations within a reasonable period of time. See section 751(h) of the Act. The regulations promulgated pursuant to the statute provide procedures for the correction of ministerial errors, which allow parties to submit comments and the Department to analyze the comments and correct any ministerial errors by amendment of the final results. See 19 CFR 351.224(e). The definition of a ministerial error in an antidumping determination is contained both in section 751(h) of the Act and in 19 CFR 351.224(f). Specifically, these provisions state

that a ministerial error is "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial." Thus, any issue raised by interested parties as a ministerial error which is, in fact, the result of a methodological decision by the Department will not be considered a ministerial error as it would not meet the statutory definition of the term.

Background

On August 9, 2007, the Department publicly announced the final results of this administrative review. On August 16, 2007, pursuant to 19 CFR 351.224(b), the Department disclosed calculations performed for these final results to the interested parties of the first administrative review and concurrent new shipper reviews of wooden bedroom furniture from the People's Republic of China ("PRC"). These final results were published in the Federal Register, and were accompanied by an unpublished issues and decision memorandum which is available on the Import Administration's website (http://www.trade.gov/ia/). See Amended Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People's Republic of China, 72 FR 46957 (August 22, 2007) ("Final Results")[1] and accompanying Issues and Decision Memorandum (August 8, 2007) ("Issues and Decision Memo").

On August 21, 2007, Petitioners, Shanghai Aosen, Dare Group, and Kunwa submitted ministerial error allegations with respect to the Department's antidumping duty margin calculation in the Final Results. On August 27, 2007, Petitioners and Dare Group filed timely rebuttal comments.

Analysis of the Alleged Ministerial Errors

Comment 1: Treatment of Contract Manufacturing in Ahuja's Surrogate Financial Ratios

Dare Group argues that in the Final Results, the Department intended to avoid a numerator and denominator "mismatch" in the calculation of Ahuja Furnishers Private Limited's ("Ahuja") surrogate financial ratios. Dare Group cites to the Issues and Decision Memo where the Department explained that ". . . goods produced by 'contract manufacturing' have already been included in the numerator of manufacturing overhead as an expense, and thus, adding 'contract manufacturing' to the denominator of the manufacturing ratio will eliminate the mismatch between the numerator and denominator as alleged by Dare Group." See Issues and Decision Memo, at Comment 18. Dare Group contends that the Department failed to add the "contract manufacturing" expense to the denominator in its calculation of the manufacturing overhead ratio and that "contract manufacturing" is present only in the numerator of the manufacturing overhead ratio. According to Dare Group, this qualifies as an unintentional addition error under the regulatory definition of "ministerial error." Therefore, Dare Group asserts that the Department

[1] As a result of an inadvertent error by the Department in the final results, an incorrect appendix was attached to the notice released on August 8, 2007. The amended final results correct this error and were published in place if the original version released on August, 2007. The original notice was never published in the Federal Register.

should add "contract manufacturing" to the denominator of the manufacturing overhead ratio.

Petitioners argue that the Department's treatment of "contract manufacturing" in the Final Results was consistent with its intent and there was no ministerial error in the treatment of "contract manufacturing" expense when the Department calculated the manufacturing overhead ratio from Ahuja's financial statements. Petitioners maintain that although the Department excluded "contract manufacturing" from the manufacturing overhead ratio for Ahuja in the preliminary results, in the final results the Department determined that the expense should be categorized as manufacturing overhead. Petitioners cite to the Department's Final Results, which stated that the Department disagreed with "Dare Group that 'contract manufacturing' should be treated as ML&E or SG&A expenses in the calculation of Ahuja's surrogate financial ratios . . . Therefore, for the final results, we have determined neither to exclude contract manufacturing from Ahuja's financial ratios, nor to include it in the SG&A ratio, but to include it in manufacturing overhead because it is listed with other manufacturing line-items in the surrogate company's financial statements." See Issues and Decision Memo, at Comment 18.

Petitioners maintain that by treating "contract manufacturing" as manufacturing overhead, the Department included the expense in the numerator of the manufacturing overhead ratio and in the denominator of the selling, general, and administrative ("SG&A") expense and profit ratios. Petitioners maintain that by rejecting the argument that "contract manufacturing" should be treated as material, labor, and energy ("ML&E"), the Department determined that the expense would not be included in the denominator of the manufacturing overhead ratio, which consists of ML&E expenses. See Wooden Bedroom Furniture from the People's Republic of China: Factor Valuation Memorandum for the Final Results, at 3 (August 8, 2007) ("Final Factor Valuation Memorandum"). Finally, Petitioners argue that if the Department agreed with Dare Group's allegation, it would treat "contract manufacturing" as part of ML&E and, thus, would remove the expense from the numerator of the manufacturing overhead ratio.

Department's Position: We disagree with Dare Group. In the final results, we stated that we would treat "contract manufacturing" as an expense in the manufacturing overhead ratio, meaning that "contract manufacturing" would be included in the numerator of the manufacturing overhead ratio. See Issues and Decision Memo, at Comment 18. The numerator of the manufacturing overhead ratio consists only of the overhead expenses associated with manufacturing, while the denominator is the sum of ML&E expenses. In the final results, we rejected treating "contract manufacturing" as ML&E (i.e., direct labor), but instead treated it as a manufacturing expense, because we found "that 'contract manufacturing' expenses are more akin to overhead expenses, and not SG&A." See Issues and Decision Memo, at Comment 18. Therefore, we treated "contract manufacturing" as intended and it was not a ministerial error. See also, Final Factor Valuation Memorandum, at 3. Dare Group quoted a sentence of the Issues and Decision Memo that appeared to indicate that we intended to do the calculation differently. In the final results, our intention was to state that there was no "mismatch" between the numerator of the manufacturing overhead ratio and the denominator of the SG&A and profit ratios because the latter two ratios include the numerator of the manufacturing overhead ratio. However, in the final results, we inadvertently stated that there was no mismatch between the denominator and the numerator of the manufacturing overhead ratio. In fact, the inclusion of an expense in both the numerator and denominator of the same ratio would mathematically cancel

the application of that expense. Accordingly, for the second amended final results, we will not revise Ahuja's surrogate financial ratios.

Comment 2: Shanghai Aosen's Conversion Factors for Ash, Birch, and Pine Veneers

Shanghai Aosen argues that the Department calculated the surrogate value for ash, birch, and pine veneers using Monthly Statistics of the Foreign Trade of India data, which is reported in terms of value/kilogram. However, Shanghai Aosen claims it reported its per unit consumption of ash, birch, and pine veneers in terms of square meters. Shanghai Aosen claims the Department made a ministerial error because the Department did not convert the per- kilogram surrogate values to per-square meter surrogate values. Additionally, Shanghai Aosen states that the Department should use a conversion factor of 0.4150 kg/square meter for birch veneer. Further, Shanghai Aosen states because there are no genus-specific conversion factors for ash and pine, the Department should use an average conversion factor of 0.3572 kg/square meter[2] to calculate the surrogate values of ash and pine on the record of this review.

No other party commented on this issue.

Department's Position: We agree with Shanghai Aosen that we did not convert the per-kilogram surrogate values to per-square meter surrogate values. Additionally, we note that Shanghai Aosen reported its consumption of these factors of production ("FOP") in terms of square meters. Therefore, for the second amended final results, we have converted the per-kilogram surrogate values to per-square meter surrogate values using the conversion factors provided by Shanghai Aosen. See "Analysis Memorandum for the Second Amended Final Results of the First Administrative Review on Wooden Bedroom Furniture from the People's Republic of China: Shanghai Aosen Furniture Co., Ltd., at 2 (November 5, 2007) ("Second Amended Final Analysis Memo").

Comment 3: Surrogate Value for Dare Group's Inputs of CURVINGWOODDY and VENEERPLY

Petitioners note that the Department valued Dare Group's FOPs, CURVINGWOODDY and VENEERPLY, using Indian Harmonized Tariff Schedule ("HTS") number 4412.14.90. Petitioners assert that the Department, however, failed to use the adjusted average unit value ("AUV") of 9,367.03 rupees per cubic meter for this FOP, as it stated it would in the Issues and Decision Memo, at Comment 11. Petitioners contend that the Department should correct the AUV for 4412.14.90 in calculating Dare Group's margin.

No other party commented on this issue.

Department's Position: We agree with Petitioners. In the Issues and Decision Memo at Comment 11, we stated that we would adjust the AUV of Indian HTS 4412.14.90 to disregard certain aberrational values in that HTS category. The resultant AUV is 9,367.03 rupees per cubic

[2] See Final Factor Valuation Memorandum, at Attachment 2.

meter. For the second amended final results, we have recalculated Dare Group's margin using this corrected value. See Analysis Memorandum for the Second Amended Final Results for Dare Group, at 2, dated concurrently with this memorandum.

Comment 4: Kunwa's Separate Rate Status

Kunwa asserts that the Department relied on the incorrect documentation Kunwa submitted on April 18, 2006, rather than the correct documentation it submitted on January 3, 2007, and March 22, 2007, in determining whether Kunwa was eligible for a separate rate. Further, Kunwa asserts that, in the final results, the Department made its decision based partly on information in a proprietary document dated June 4, 2007, but the public version of this document did not name Kunwa or have any indication that the proprietary version contained information that would prevent Kunwa from receiving a separate rate. See Memorandum to the File, from Katharine Huang, International Trade Compliance Analyst, AD/CVD Operations, Office 8, Import Administration, "Wooden Bedroom Furniture from the People's Republic of China: Customs Entry Documents," (June 4, 2007).

Kunwa provides a timeline of the documents relevant to its ministerial error allegation. Kunwa states that on December 16, 2005, its customer, Water Street Antiques, filed with the U.S. Customs and Border Protection ("CBP") a United States Customs Entry Summary Form 7501 ("7501") for an entry of a TV cabinet with small drawers designating its entry as "type 01," i.e., not subject to antidumping duties. Kunwa also states that CBP rejected this 7501, and required Kunwa to submit a corrected 7501 designating its entry as "type 03," i.e., subject to antidumping duties. Kunwa states that it paid antidumping duty deposits for this entry on January 30, 2006.

Kunwa reports that on April 18, 2006, it submitted its separate rate application, which included the incorrect 7501 that CBP had rejected. See Kunwa Entrprise Company's Separate-Rate Application (April 18, 2006). Kunwa also reports that on January 3, 2007, it submitted its response to the Department's first supplemental questionnaire, which included an explanation of the episode with CBP and documentation demonstrating that Kunwa is owned by a Hong Kong resident. See Response of Kunwa Enterprise to Supplemental Questionnaire, (January 3, 2007). Kunwa states that, in its preliminary results, the Department stated its intent to issue a second supplemental questionnaire to Kunwa because additional information would be necessary in order to determine whether Kunwa was eligible for separate rate status.

Kunwa contends that, on March 22, 2007, it submitted a response to the Department's second supplemental questionnaire. See Response of Kunwa Enterprise to Second Supplemental Questionnaire, (March 22, 2007). Kunwa also contends that this questionnaire asked only one question and this question only instructed Kunwa to provide a copy of the 7501 indicating that Kunwa exported subject merchandise during the period of review ("POR"). Kunwa contends that it fully answered in narrative form and included the correct 7501 with an entry type code "03", i.e., subject to antidumping duties.

Kunwa alleges that the Department erred by determining that Kunwa's sale involved non-subject merchandise because Kunwa had already placed on the record CBP documentation demonstrating a sale of subject merchandise during the POR. Kunwa states that although it did

not have access to the proprietary version of the June 4, 2007, memorandum, this memorandum cannot contain information that contradicts the entry documents that Kunwa had submitted to the Department. Specifically, Kunwa asserts that it is a ministerial error to base a determination on an obsolete document, i.e., the incorrect 7501 submitted on April 18, 2006, when it has been superseded by a corrected document, i.e., the corrected 7501, submitted on March 22, 2007. Kunwa contends that no party challenged the designation by CBP that the entry listed on its amended 7501 was for a sale of subject merchandise

Further, Kunwa argues that the Department denied its separate rate application in the final results because Kunwa had "not demonstrated an absence of government control." Kunwa alleges that the Department erred as matter of procedure because the Department stated in the preliminary results that Kunwa had not demonstrated an absence of government control, but the Department's later supplemental questionnaire did not include any questions about government control. Kunwa alleges that the Department also erred by not serving it with the proprietary memorandum dated June 4, 2007, that included information upon which the Department relied in part to deny it a separate rate in the final results. Additionally, Kunwa maintains that the public version of this memorandum did not mention Kunwa by name, thus, precluding Kunwa from addressing that information in the final results. Therefore, Kunwa asserts that the Department should grant Kunwa a separate rate.

Petitioners agree that Kunwa's entry was subject merchandise and did not comment on whether Kunwa had demonstrated an absence of government control over its export activities.

Department's Position: We agree with Kunwa. We incorrectly determined that Kunwa had not demonstrated a sale of subject merchandise to the United States during the POR. The Department made an unintentional error, of the type described in 751(h) of the Act and 19 CFR 351.224(f), by relying on the documentation submitted by Kunwa on April 18, 2006, and by failing to take into consideration the documentation submitted by Kunwa on January 3, 2007, and March 22, 2007. We also find that the information contained in the June 4, 2007, memorandum does not contradict the information already placed on the record by Kunwa.[3]

After analyzing Kunwa's record evidence, we have determined that Kunwa made a sale of subject merchandise to the United States during the POR. Having determined that Kunwa made a sale of subject merchandise to the United States during the POR, we analyzed record evidence to determine whether Kunwa was sufficiently independent to be entitled to a separate rate.

To analyze whether Kunwa was free of government control, we analyzed its exporting activities under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), and later expanded upon in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under this analysis, exporters in non-market economies are entitled to separate, company-specific margins

[3]The proprietary version of the June 4, 2007, memorandum to the file could not be released to Kunwa because it contained confidential commercial information provided by CBP and was therefore, only released to parties under the Administrative Protective Order ("APO"). Kunwa was not represented by a party with an APO.

when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; or 3) any other formal measures by the government decentralizing control of companies.[4]

Our analysis of absence of de facto government control over exports is based on the following four factors: 1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.[5]

After analyzing Kunwa's responses, we found that the responses demonstrate an absence of government control over its export activities, both in law and in fact. Therefore, for the second amended final results, we have determined that Kunwa qualifies for a separate rate.

Comment 5: Comments Submitted by Petitioners that Do Not Meet the Regulatory Definition of Comments Regarding Ministerial Errors

Petitioners assert that the Department should update the weighted-average margin for separate-rate respondents, update liquidation instructions to CBP, and release certain query results from the Customs Net Import File.

Dare Group argues that Petitioners' allegation is based on the Department's liquidation methodology and is not a challenge to a ministerial error.

Department's Position: We note that these comments by Petitioners are not comments regarding ministerial errors as defined by 19 CFR 351.224(c), because they relate to our methodology and procedures. Accordingly, we are not addressing these issues in this memorandum.

[4] See Sparklers, 56 FR at 20588.

[5] See Silicon Carbide, 59 FR at 22586-87.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly, including those for separate rate respondents. If these recommendations are accepted, we will publish the amended final results of sales at less than fair value and the amended final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date