

Lifestyle Enterprise, Inc, et al., v. United States
Consol. Ct. No. 09-00378, Slip Op. 12-116 (CIT 2012)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO THIRD REMAND

A. SUMMARY

The Department of Commerce (“Department”) has prepared these final results of redetermination (“Final Results”) pursuant to the third remand order of the U.S. Court of International Trade (“CIT” or the “Court”), issued on September 7, 2012, in *Lifestyle Enterprise, Inc., et al., v. United States*, Consol. Ct. No. 09-00378, Slip Op. 12-116 (CIT 2012) (“*Lifestyle III*”). The remand concerns the *Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People’s Republic of China*, 74 FR 41374 (August 17, 2009), as amended by, *Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People’s Republic of China*, 74 FR 55810 (October 29, 2009) (collectively, “*AR 3 Final Results*”), covering the 2007 administrative review of the antidumping duty order on wooden bedroom furniture from the People’s Republic of China (“PRC”).

On November 6, 2012, the Department released the Draft Results of Redetermination Pursuant to Third Remand (“Draft Results”) to the parties for comment. In the Draft Results, the Department recalculated the adverse facts available (“AFA”) rate for Orient International Holding Shanghai Foreign Trade Co., Ltd. (“Orient”) using a larger percentage of Guangdong Yihua Timber Industry Co., Ltd.’s (“Yihua Timber”) sales to address the Court’s directive to use sales “within the mainstream” so that the remand results reasonably reflect Orient’s commercial reality while serving as a deterrent for non-cooperation. On November 13, 2012, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company,

Inc. (collectively “Petitioners”) submitted comments on the Draft Results. On November 15, 2012, Lifestyle Enterprise, Inc., Trade Masters of Texas, Inc. and Emerald Home Furnishings, LLC (collectively “Lifestyle”), submitted a response to Petitioners’ comments.¹ The Department has addressed interested parties’ comments in detail below.

B. BACKGROUND

In response to *Lifestyle Enterprise, Inc. v. United States*, 844 F. Supp. 2d 1286-87 (CIT 2012), (“*Lifestyle II*”), in the final remand results of redetermination (“*Lifestyle II Redetermination*”), filed June 11, 2012, the Department (1) re-calculated the valuation of Yihua Timber’s wood inputs using the Philippines National Statistics Office’s volume-based data, and (2) took the average of Yihua Timber’s highest CONNUM-specific margins for product types similar to those sold by Orient during the period of review (“POR”) to determine Orient’s AFA rate.

Based on record information, the Court sustained the Department’s *Lifestyle II Redetermination* with respect to the revaluation of Yihua Timber’s wood inputs. The Court remanded Orient’s AFA rate to the Department for reconsideration.

1. Orient’s AFA rate

Because the administrative review was requested for a total of 29 companies, the Department determined that it did not have the resources to individually examine all companies. The Department, therefore, selected the two largest exporters by volume for individual

¹ See Petitioners’ submission entitled, “Wooden Bedroom Furniture From The People’s Republic Of China: Petitioners’ Comments On The Draft Results Of Redetermination Pursuant To Second Remand (Consol. Ct. No. 09-00378),” dated May 31, 2012 (“Petitioners’ comments”); Yihua Timber’s submission entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Comments on the Department’s Second Remand Determination,” dated May 31, 2012; Lifestyle’s submission entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Comments of Lifestyle Enterprise, Inc., Trade Masters of Texas, Inc. and Emerald Home Furnishings, LLC On Draft Results of Redetermination Pursuant to Second Remand (Consol. Ct. No. 09-00378, Slip Op. 12-45 (CIT 2012)),” dated May 31, 2012.

examination: Yihua Timber and Orient.² After the Department informed Orient that its questionnaire response was deficient, Orient requested to withdraw the confidential version of its questionnaire response and informed the Department it would significantly limit its participation in the review.³ Based on its separate rate certification, which remained on the record, the Department granted Orient separate rate status; however, based on Orient's failure to fully respond to the antidumping questionnaire, the Department applied total AFA to Orient and assigned the rate of 216.01 percent for the *AR 3 Final Results*, finding the rate both reliable and relevant.⁴ The AFA rate of 216.01 percent was based on the calculated rate of Shenyang Kunyu Wood Industry Co., Ltd. ("Kunyu"), a company reviewed in a 2004-2005 new shipper review.

Lifestyle Enterprise, Inc. ("Lifestyle") and Orient challenged this decision at the Court of International Trade, arguing that the Department erred in assigning Orient the 216.01 percent rate because it was also the PRC-wide rate and Orient had proven its separate rate status. The Court remanded to the Department the selection of the 216.01 percent rate, as it applies to Orient, for reconsideration and explanation "{of} its determination or {to} replace Orient's rate with a corroborated rate, reflective of commercial reality."⁵

After a re-examination of the record evidence, the Department determined in the *Lifestyle I Redetermination* that the information on the record corroborated the rate of 216.01 percent, as it related to Orient. The Department found that a rate of 216.01 percent had probative value because it was within the range of the transaction-specific margins that we found for Yihua

² See Memorandum regarding; Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Selection of Respondents, dated July 31, 2008.

³ See Orient's submission entitled, "Wooden Bedroom Furniture from the People's Republic of China; Withdrawal of Orient International Section A Questionnaire Response," dated September 18, 2008.

⁴ See *AR 3 Final Results*, 74 at 41380.

⁵ See *Lifestyle I*, 768 F. Supp. 2d at 1299.

Timber during the instant POR. The Department, therefore, found the 216.01 percent rate to be reliable in *Lifestyle I Redetermination*.

In *Lifestyle II*, the Court remanded the corroboration of Orient's AFA rate. The Court held that the Department did not use "'reliable facts' that have 'some grounding in commercial reality,'" in corroborating the AFA rate.⁶ Specifically, the Court found Department's reasoning insufficient for corroboration purposes because the transaction-specific margins represented a small number of transactions, the information was from a prior POR, and the data came from a "much smaller and newer company."⁷ The Court directed that, in determining an AFA rate to apply to Orient, "Commerce should start with the highest rate calculated for a comparable respondent or respondents and then add an additional amount to ensure compliance."⁸ Pursuant to *Lifestyle II*, the Department reexamined the AFA rate assigned to Orient. The Department found Yihua Timber to be comparable to Orient because Yihua Timber was also selected as one of the two largest exporters of subject merchandise to the United States during the POR.⁹ The Department relied upon Orient's sample invoice to determine the types of wooden bedroom furniture Orient exported to the United States during the POR. The Department then used Yihua Timber's export and U.S. sales data on those products types to calculate the simple average of the highest CONNUM-specific margins as Orient's AFA rate. The Department found the 130.81 percent AFA rate was tied to Orient because it was based on contemporaneous margins from a comparable company for types of merchandise the record showed Orient actually exported to the United States during the POR.

⁶ See *Lifestyle II*, 844 F. Supp. 2d at 1288.

⁷ See *id.*, 844 F. Supp. 2d at 1291.

⁸ See *id.*, 844 F. Supp. 2d at 1291, n.13.

⁹ See *id.*

SUMMARY OF COURT'S OPINION IN *LIFESTYLE III*

In *Lifestyle III*, the Court remanded Orient's AFA, holding that the Department erred in calculating the AFA rate because it used an "impermissibly small percentage"¹⁰ of a different respondent's sales.

In *Lifestyle III*, the Court stated that in order to support a very high margin, a "larger percentage of a party's sales data" must be examined.¹¹ The Court noted that the Department instead used a relatively small number of the highest CONNUM-specific margins, which were "clearly outside the mainstream."¹²

The Court held that the Department failed to provide "substantial evidence" of the relationship between the rate assigned to Orient and its commercial reality.¹³ According to the Court, the Department must examine the relationship between the AFA rate proposed for Orient and those assigned to cooperating respondents, both past and present, of a comparable size.¹⁴ In addition, the Court stated that the Department failed to explain why Orient's rate increased so dramatically from its prior margin. In this case, the Department proposed an AFA rate over 100 percent, which the Court deems to be outside the "bounds of commercial reality" and likely "punitive."¹⁵ To support such a high rate, the Department must rely on data reflective of Orient's commercial reality.¹⁶ Data stemming from the mainstream, normal business transactions of

¹⁰ See *Lifestyle III*, at 9.

¹¹ See *id.*

¹² See *Lifestyle III*, at 10.

¹³ See *id.*, at 12-13.

¹⁴ See *id.*, at 12.

¹⁵ See *id.*, at 12.

¹⁶ See *id.*, at 12.

cooperating respondents would satisfy this requirement.¹⁷ As it did not use such data, the Department's proposed AFA rate of 130.81 percent was unsupported by substantial evidence.¹⁸

ANALYSIS

In compliance with the Court's order, the Department began its analysis by examining the "highest rate calculated for a comparable respondent or respondents and then add{ing} an additional amount to ensure compliance."¹⁹ We continue to rely on Yihua Timber's review results for the following reasons. First, Yihua Timber was selected along with Orient as one of the two largest exporters of subject merchandise to the United States during the POR and so we find that the experience of Yihua Timber – because it operated as one of the largest furniture exporters in the same industry as Orient and over the same POR – is reflective of the export experience we would expect of Orient, had it cooperated. Second, there exists on the record of this review extensive information regarding Yihua Timber's sales and production data, which allows for a detailed analysis of actual commercial realities in effect during the POR. Finally, Orient's sample invoice indicates that it sold many of the same types of furniture products which Yihua Timber exported to the United States during the POR. For these reasons, we find that Yihua Timber's experience is appropriate for purposes of assigning an AFA rate to Orient. Therefore, the Department has determined that any rate below Yihua Timber's weighted-average calculated rate of 40.74 percent would not "provide respondents with an incentive to cooperate."²⁰

Next, the Department added "an additional amount to ensure compliance," as directed by the Court. The Department used Yihua Timber's data and Orient's sample invoice to construct

¹⁷ See *id.*, at 12.

¹⁸ See *id.*, at 13.

¹⁹ See *Lifestyle III*, at 11.

²⁰ See *F.lli de Cecco di Filippo Fara S. Martino SpA. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000).

an AFA rate for Orient using sales data from the record of the underlying review. Specifically, we calculated a simple average of the top 15 percent of Yihua Timber's sales for each of the seven types of products we determined to have been sold by both Yihua Timber and Orient during the POR. The simple average of the weighted-average margins for each product type amounts to an 83.55 percent margin, which we have determined to apply as AFA for Orient. In doing so, we have begun with Yihua Timber's margin as it is reflective of what we would expect of Orient, had it cooperated, and have broadly focused on the highest margins within that group, in order to encourage compliance. Below, we address several concerns that the Court noted in *Lifestyle III*.

First, the Court stated that "Commerce must provide substantial evidence for such a high AFA rate by using, in some manner, data in the mainstream of normal transactions of cooperating respondents or otherwise relying upon data reflecting commercial reality."²¹ Therefore, unlike in the second remand redetermination where the Department averaged Yihua Timber's seven single highest CONNUM-specific margins for each product type to calculate an AFA rate, we have determined to use instead the top 15 percent of Yihua Timber's sales of each product in order to satisfy the Court's directive to better reflect the mainstream of sales from this cooperating respondent.²²

Second, the Court stated in *Lifestyle III* that the Department has not explained "why Orient's rate increased so dramatically from its prior margin."²³ The Department notes that Orient did not receive its own calculated rate prior to the underlying review. Because Orient was never reviewed as a mandatory respondent in a previous review, it was never given a rate based

²¹ See *Id.*, at 12-13.

²² We note that using this method results in the inclusion of over 20 times the quantity of sales, when compared to the quantity used in the second remand redetermination.

²³ See *Lifestyle III*, at 11.

on its own pricing behavior. Rather, its prior separate rate margin was based on the margins of other companies who were cooperative respondents selected for individual examination in prior PORs. This prior margin was based upon a review under section 777A(c)(2)(B) of the Tariff Act of 1930, as amended, that allows the Department to limit individual examination to the largest exporters who were requested for review. This administrative review was Orient's first opportunity to receive a rate based on its own data and pricing behavior, but, because Orient chose to withdraw participation in the review, that calculation was not possible.

E. DISCUSSION OF INTERESTED PARTIES' COMMENTS

COMMENT 1: ORIENT'S AFA RATE

- Petitioners argue that the 83.55 percent rate the Department calculated in the Draft Results is not sufficiently adverse. Petitioners contend that Orient made a calculated decision not to participate in the review despite a 216.01 percent respondent-specific AFA margin in effect from a prior review. Consequently, according to Petitioners, the Department should use 216.01 percent as the AFA rate or, at the least, assign the 130.81 percent rate calculated in *Lifestyle II* to Orient.
- In the alternative, Petitioners argue that the Department should calculate the AFA rate using the top 10 percent instead of the top 15 percent of sales from the CONNUMs which Yihua Timber and Orient shared.
- Petitioners also provide further explanation on why Orient's previous 7.24 percent rate is not probative of Orient's pricing behavior.
- Lifestyle asserts that the Department cannot apply the 216.01 percent and 130.81 percent rates advanced by petitioner as have already been reversed by the Court.
- Lifestyle further contends that the Department has no legal reason to revisit the calculation from the draft results, and so it should make no changes to those results.

Department's Position:

We have made no changes to our findings from the draft results. With respect to Petitioners' recommendation that the Department revert to either the 216.01 percent rate from the *Final Results*, or the 130.81 percent rate from *Lifestyle II*, we note that those rates were not sustained as potential AFA margins by the Court. Therefore, at the Court's direction, we have calculated a new AFA rate for Orient.

We have chosen not to base the AFA rate on the top 10 percent, rather than the top 15 percent, of sales from the CONNUMs which Yihua Timber and Orient shared, as suggested by Petitioners. As the Court noted, "the statute tasks Commerce" with developing a methodology that is in accordance with law and supported by substantial evidence.²⁴ In this case, the Department has determined that the top 15 percent of sales comply with the Court's order to use sales within "the mainstream of the cooperating respondent's normal transactions."²⁵ The Petitioners provide no compelling reason to use the top 10 percent, other than to say that it will result in a higher AFA rate. Although Petitioners point out that 10 percent is a larger percentage of sales than the Department has used in other cases, the Department finds that, based on the facts of this case, 15 percent satisfies the Court's directive to rely on a higher percentage of a party's sales in determining an AFA rate. Thus, we continue to rely on the top 15 percent of sales to calculate the AFA margin.

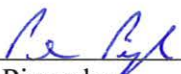
FINAL RESULTS OF REDETERMINATION

Pursuant to the remand order, we have reexamined the issue remanded to us. For purposes of the Final Results of Redetermination, the Department has, under protest, expanded

²⁴ See *Lifestyle III*, at 6.

²⁵ See *Id.*, at n.10.

the universe of sales it examined to determine an AFA rate and derived a margin of 83.55 percent, which we have assigned to Orient.²⁶



Paul Piquado
Assistant Secretary
for Import Administration

4 DECEMBER 2012

Date

²⁶ See Analysis Memorandum for the Final Redetermination Pursuant to the Second Court Remand in the 2007 Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Guangdong Yihua Timber Industry Co., Ltd. dated May 2, 2012.