

Linyi Bonn Flooring Manufacturing Co., Ltd. v. United States  
Court No. 15-00227, Slip Op. 17-46 (April 21, 2017)  
**FINAL RESULTS OF REDETERMINATION**  
**PURSUANT TO COURT ORDER**

**I. SUMMARY**

The U.S. Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court or CIT) in *Linyi Bonn*.<sup>1</sup> This litigation pertains to the second administrative review of multilayered wood flooring (MLWF) from the People’s Republic of China (PRC).<sup>2</sup> For the purposes of this final remand redetermination, the Department has determined that Linyi Bonn Manufacturing Co., Ltd. (Linyi Bonn) had no shipments that are subject to the second administrative review and intends to issue instructions to U.S. Customs Border and Protection (CBP) as described below. A complete analysis of the remanded issue is included in section II, below.

**II. REMANDED ISSUE**

**1. Linyi Bonn’s Partial No Shipments Certification**

A. Background

Linyi Bonn was reviewed in a new shipper review (NSR) of the antidumping duty order

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<sup>1</sup> See *Linyi Bonn Flooring Manufacturing Co., Ltd. v. United States*, Court No. 15-00227, Slip Op. 17-46 (April 21, 2017) (*Linyi Bonn*).

<sup>2</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012–2013*, 80 FR 41476 (July 15, 2015) (*Final Results*).

on MLWF from the PRC covering the period of review from December 1, 2012, to May 31, 2013.<sup>3</sup> In the *Final Results of NSR*, the Department calculated a weighted-average dumping margin for Linyi Bonn of zero percent, also finding that Linyi Bonn had demonstrated its entitlement to a separate rate.<sup>4</sup>

Linyi Bonn was also subsequently a respondent in the second administrative review, covering the period of review from December 1, 2012 through November 30, 2013. The period of review for the NSR partially overlapped with the period of review of the second administrative review. In the preliminary results of the second administrative review, the Department found that Linyi Bonn was part of the PRC-wide entity, because it did not submit to the Department either a certification of no sales, a separate rate certification, or separate rate application. As a result, the Department preliminarily found that Linyi Bonn remained subject to the review and had failed to demonstrate that it was eligible for a separate rate.<sup>5</sup> After the *Preliminary Results*, Linyi Bonn filed a partial no shipments certification (certifying to the absence of entries during the period of review other than what was already reviewed in the *Final Results of NSR*), which the Department rejected from the record as untimely.<sup>6</sup> As a result, the Department's findings with respect to Linyi Bonn remained unchanged in the *Final Results*.<sup>7</sup>

The CIT remanded the *Final Results*, finding that the Department's determination to assign Linyi Bonn the PRC-wide rate of 58.84 percent was contrary to law.<sup>8</sup> The CIT held that

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<sup>3</sup> *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews 2012-2013*, 79 FR 66355 (November 7, 2014) (*Final Results of NSR*).

<sup>4</sup> *Id.* at 66356.

<sup>5</sup> *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 1388, 1390, n. 9 (January 9, 2015) (*Preliminary Results*) and Preliminary Decision Memorandum at page 9 fn. 26.

<sup>6</sup> See Letter from the Department Re: Rejection of Submission of Partial No Shipment Certification Filed in the 2012-2013 Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China dated January 30, 2015.

<sup>7</sup> See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>8</sup> See *Linyi Bonn*, Slip Op. at 13.

the Department's *Initiation Notice*<sup>9</sup> failed to provide notice to Linyi Bonn of the need to file a "partial" no shipments certification for only a portion of the period of review.<sup>10</sup> Instead, the *Initiation Notice* instructed parties with *no* shipments to file no shipments certifications, which did not apply to Linyi Bonn because it had an entry during the period of review (that was reviewed in the NSR).<sup>11</sup> The CIT concluded that, "{b}ecause of the unfairness created by the lack of notice, the untimeliness of Linyi Bonn's attempted filing of its own partial no shipment certification does not justify the Department's assigning Linyi Bonn the 58.84% margin."<sup>12</sup> The CIT likewise held that the "fact that Linyi Bonn did not file a separate rate application in the second review also fails as a justification for the Department's decision" because Linyi Bonn would not have needed to file a separate rate application had it been provided a fair opportunity to comply with the Department's partial no shipments procedure.<sup>13</sup>

Therefore, the CIT remanded for the Department to "correct the problem created by its failure to provide that notice."<sup>14</sup> In particular, the Court ordered the Department to afford to Linyi Bonn "the opportunity it would have had if the Department's failure to provide notice had not occurred."<sup>15</sup>

## B. Analysis

Following the Court's order that the Department "correct the problem created by its failure to provide" adequate notice to Linyi Bonn of the need to file a partial no shipments

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<sup>9</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 6147 (February 3, 2014) (*Initiation Notice*).

<sup>10</sup> See *Linyi Bonn*, Slip Op. at 18-19.

<sup>11</sup> *Id.* at 16

<sup>12</sup> *Id.* at 13.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 28.

<sup>15</sup> *Id.*

certification,<sup>16</sup> the Department requested additional information from Linyi Bonn.<sup>17</sup> Specifically, the Department requested that Linyi Bonn provide confirmation of no shipments (*i.e.*, a no shipments certification) during the applicable portion of the period of review that was not covered by the *Final Results of NSR* (*i.e.*, June 1, 2013, through November 30, 2013). On May 23, 2017, Linyi Bonn submitted a partial no shipments certification, certifying that it made no shipments, entries, exports, or sales of subject merchandise during the portion of the period of review that was outside of the period of review included in the *Final Results of NSR*.<sup>18</sup> Additionally, the Department issued a no shipment inquiry to CBP to confirm that Linyi Bonn did not ship subject merchandise to the United States during the period June 1, 2013, through November 30, 2013.<sup>19</sup> On June 1, 2017, the Department issued the draft results of redetermination and requested all comments by June 7, 2017. On June 5, 2017, the Department received notice from CBP that Linyi Bonn did not have any shipments of MLWF from June 1, 2013, through November 30, 2013. On June 7, 2017, Linyi Bonn submitted comments supporting the Department's approach in the draft results of redetermination.

### **III. FINAL RESULTS OF REDETERMINATION**

Based on this analysis set forth above, we have determined that Linyi Bonn had no shipments during the period of review that were not covered in the overlapping period of review for the partially concurrent NSR. Accordingly, the Department has determined that Linyi Bonn had no shipments that are subject to the second administrative review. As a result of this final remand redetermination and pending a final and conclusive court decision in this litigation,

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<sup>16</sup> *Id.*

<sup>17</sup> See Remand Redetermination Supplemental Questionnaire to Linyi Bonn Flooring Manufacturing Co., Ltd. dated May 16, 2017.

<sup>18</sup> See Letter to the Department Regarding: *Multilayered Wood Flooring from the People's Republic of China: Submission of Partial No Shipment Certification* dated May 23, 2017.

<sup>19</sup> On May 25, 2017, the Department submitted a no-shipment inquiry with the U.S. Customs and Border Protection (CBP), internal message number 71559, for Linyi Bonn.

including all appeals and remand proceedings, as provided in section 516A of the Tariff Act of 1930, as amended (the Act),<sup>20</sup> the Department intends to take the necessary steps to correct its prior assessment instructions with respect to Linyi Bonn to: (1) give effect to the finding of no shipments during the period June 1, 2013, through November 30, 2013; and (2) ensure that liquidation of any entries of subject merchandise that were produced and exported by Linyi Bonn during the period December 1, 2012, through May 31, 2013 are liquidated in accordance with the *Final Results of NSR*.

With respect to the applicable cash deposit rate for Linyi Bonn, the Department notes that on May 26, 2017, the Department issued the final results of the fourth administrative review of the antidumping duty order on MLWF from the PRC. In that review, the Department calculated a weighted-average dumping margin of zero percent for Linyi Bonn during the period of review from December 1, 2014, through November 30, 2015.<sup>21</sup> The rates established in that review “shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination *and for deposits of estimated duties.*”<sup>22</sup> Further, to the extent that Linyi Bonn paid excess cash deposits on entries of subject merchandise that entered during the period of the fourth administrative review, those excess cash deposits will be refunded with interest at the time at which the entries are liquidated.<sup>23</sup> Therefore, the results of this remand redetermination will not change Linyi Bonn’s cash deposit rate.

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<sup>20</sup> There is an active injunction for Linyi Bonn’s exports of subject merchandise that were entered, or withdrawn from warehouse, for consumption on or after December 1, 2012, until November 30, 2013. Absent any further order by the Court, the Department cannot instruct CBP to liquidate entries during the period covered by the injunction until there is a final and conclusive court decision in this case.

<sup>21</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Partial Rescission of Antidumping Duty Administrative Review; 2014-2015* dated May 26, 2017, and accompanying Issues and Decisions Memorandum.

<sup>22</sup> See section 751(a)(2)(C) of the Act (emphasis added).

<sup>23</sup> See section 778 of the Act.

#### **IV. COMMENTS ON DRAFT RESULTS OF REDETERMINATION**

##### **Comment: Support of the Department's approach**

###### Linyi Bonn's Comments

- Linyi Bonn supports the Department's approach taken in the Draft Results of Redetermination determining that Linyi Bonn had no shipments during the period of review that were not covered in the overlapping period of review for the partially concurrent New Shipper Review.

###### **Department's Position:**

As discussed above, we have determined that Linyi Bonn had no shipments during the period of review that were not covered in the overlapping period of review for the partially concurrent NSR. Accordingly, the Department has determined that Linyi Bonn had no shipments that are subject to the second administrative review

#### **V. FINAL RESULTS OF REDETERMINATION**

As describe above, pursuant to the Court's instructions, the Department reconsidered Linyi Bonn's no shipments certification and requested additional confirmation of no shipments during the applicable portion of the period of review that was not covered by the *Final Results of NSR*. As a result of this remand, the Department has determined that Linyi Bonn had no shipments that are subject to the second administrative review.

6/19/2017

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Signed by: GARY TAVERMAN

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations