



October 17, 2013

The Honorable Penny Pritzker
Secretary of Commerce
U.S. Department of Commerce
Herbert Clark Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Pritzker:

I am writing on behalf of the International Wood Products Association (IWPA) to ask that the Department provide prompt instructions to U.S. importers and the U.S. Customs and Border Protection (CBP) agents on the expiration of the provisional measures in the antidumping duty investigation of Chinese hardwood and decorative plywood (Inv. A-570-986). This instruction, required under our international agreements and U.S. law, is especially important now given the impact of the government shutdown. The last time that there was an extended government shutdown, the Department of Commerce (DOC) issued separate instructions regarding the beginning and ending of the gap periods.

Specifically, IWPA requests that **the Department of Commerce (DOC) issue an initial instruction to CBP to cease collection of AD duties** on Chinese hardwood and decorative plywood on the first day of the gap period and lift the suspension of liquidation **by October 30** and **issue a second instruction later to resume the suspension and duty requirement if an ITC affirmative final determination is published in the Federal Register**, closing the provisional period.

IWPA has been receiving numerous requests from its members for clarification on the AD gap period. In addition, IWPA members have expressed concern that CBP agents will reject entries due to internal CBP confusion causing costly delays at the ports.

U.S. and international law set a limit for provisional antidumping duties of six months to protect importers from hardship caused by government delay in finishing investigations. This is not extendable and was not extended during the 1995 and 1996 government shutdowns. The six month period for the Chinese plywood AD rates expires on October 30, 2013, and cannot be lawfully collected from importers on or after that date.

Because typical antidumping investigations take longer than six months after preliminary duties are first imposed, there is a “gap period” when no antidumping duties may be collected. Processing of imports during this gap period cannot be held open or “suspended.” Thus, CBP cannot collect duties

or suspend entries during this period. *See* 19 U.S.C. § 1673b(d); Art. 7.4 of the WTO Antidumping Agreement; and *F.LLI De Cecco Di Filippo Fara San Martino S.P.A. v. United States*, 21 Ct. Int'l Trade 1130, 1137-40 (Ct. Int'l Trade 1997) (strong wording in 19 U.S.C. § 1673b(d) suggests that the GATT signatories meant to put a strict limit on the imposition of provisional measures, particularly because of the harshness of the penalties involved).

The extraordinary shutdown of the federal government, ending only today, has therefore delayed the completion of the antidumping investigation involving Hardwood and Decorative Plywood from China. However, the expiration of the provisional period remains. DOC must comply with its own policies by discontinuing suspending liquidation of entries made 180 days from the date of publication of DOC's Preliminary Determination. In this case, the Preliminary Determination was published on May 3, 2013 and therefore the no antidumping duties may be collected for importations made on or after October 30, 2013.

Because of the government shutdown, DOC cannot wait until the gap period is over to issue any instruction. The gap period will be longer than typical, which means that an instruction at the end will be too late to avoid irreparable harm to importers and will waste government resources. Importers may suffer irreparable harm by having lawful entries rejected by CBP, storage or demurrage charges, cash deposits unlawfully demanded on which no interest is paid even if later refunded, distortions to future continuous bond determinations, etc. Moreover, issuing an initial and early instruction would avoid unnecessary waste of CBP resources in having to reprocess and even manually liquidate entries after-the-fact. All of this would be avoided by having instructions in place so that CBP will accept entries made properly in the first instance.

It is therefore only prudent for the Department to promptly issue guidance to CBP agents and U.S. importers to ensure smooth port operations, avoid costly re-file entries, storage or demurrage charges and avoid the CBP manual processing of these entries. Also, having a longer period of entries inappropriately categorized as "Type 3" will create the possibility for errors and distortions in the DOC's own administration of a future administrative review in the event DOC relies on CBP data of Type 3 entries to rank exporters for respondent selection. Therefore, for its own administrative interests, DOC should avoid the possibility of such distortions.

IWPA is the leading international trade association for the North American imported wood products industry, representing 200 companies and trade organizations engaged in the import of hardwoods and softwoods from sustainably managed forests in more than 30 nations across the globe. Our association members consist of three key groups involved in the import process: U.S. importers and consuming industries, domestic and offshore manufacturers, and the service providers that facilitate trade. We look forward to hearing from you on this important matter.

Sincerely,



Cindy L. Squires, Esq.
Executive Director