C-570-987
Investigation
IA/O6: DL/TP/JR
Public Document

DATE: September 16, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China

---

I. SUMMARY

On March 14, 2013, the Department of Commerce (the Department) published the Preliminary Determination for this investigation.[1] On March 15 and 18, 2013, M&G Importers and the Government of China (GOC), respectively, submitted ministerial error comments regarding the Preliminary Determination.[2] On April 16, 2013, the Department responded to these ministerial error comments, stating that the issues raised by parties in their respective comments were methodological in nature and did not constitute ministerial errors within the meaning of the Department's regulations.[3]

Between June 19 and June 29, 2013, we conducted verification of the questionnaire responses submitted by Linyi City Dongfang Jinxin Economic & Trade Co., Ltd. (Dongfang), Linyi San Fortune Wood Co., Ltd. (San Fortune), Shanghai Senda Fancywood Inc. a/k/a Shanghai Senda Fancywood Industry Co. (Senda), and their affiliated companies Shanghai Material Trading Co.,

---

[1] See Hardwood and Decorative Plywood From the People's Republic of China: Amended Preliminary Countervailing Duty Determination; and Alignment of Final Determination With Final Antidumping Determination, 78 FR 16250 (March 14, 2013) (Preliminary Determination), and the accompanying Preliminary Decision Memorandum.

[2] See Letter to Secretary Rebecca Blank, Countervailing Duty Investigation of Hardwood Plywood from the People's Republic of China: Ministerial Error Allegation (March 15, 2013), and Letter to the Department, Government of China's Significant Ministerial Error Comments: Hardwood and Decorative Plywood from the People's Republic of China (C-570-987) (March 18, 2013).

[3] See Memorandum to Barbara E. Tillman, Director AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Allegation of a Significant Ministerial Error in the Preliminary Determination," April 16, 2013.

Ltd. (Shanghai Material) and the Bailian Group (Bailian Group). We released verification reports on July 18 and July 19, 2013.[4]

Between May 20 and June 17, 2013, interested parties filed case briefs and rebuttal briefs related to the scope of the investigation.[5] At the request of interested parties Teragren LLC and Smith & Fong Company,[6] the Department held a public hearing for scope issues on June 18, 2013.[7] Scope comments are addressed in response to Comment 5 below. Case briefs concerning non-scope issues were submitted between July 1 and August 1, 2013.[8] Rebuttal briefs were filed on

[4] See Memoranda to the File, "Verification of the Questionnaire Responses Submitted by Linyi City Dongfang Jinxin Economic & Trade Co., Ltd. in the Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China" (July 18, 2013) (Dongfang Verification Report); "Verification of the Questionnaire Responses Submitted by Linyi San Fortune Wood Co., Ltd. in the Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China" (July 18, 2013) (San Fortune Verification Report); and "Verification of the Questionnaire Responses Submitted by Shanghai Senda Fancywood Industry Co., Shanghai Material Trading Co., Ltd., and Bailian Group in the Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China" (July 19, 2013) (Senda Verification Report).

[5] See Hardwood and Decorative Plywood from the People's Republic of China: Lumber Liquidators Services, LLC Scope Comments (May 20, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Petitioner's Scope Case Brief (June 3, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Lumber One Co. Georgia, Inc.'s Scope Case Brief (June 3, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Elberta Crate & Box Company's Scope Case Brief (June 3, 2013); Hardwood Plywood from the People's Republic of China: Taraca Pacific, Inc.'s Scope Rebuttal Comments (June 10, 2013); see also Hardwood Plywood from the People's Republic of China: Far East American, Inc.'s Scope Rebuttal Comments (June 10, 2013); Hardwood and Decorative Plywood from the People's Republic of China: China National Forest Products Industry Association's Scope Rebuttal Brief (June 10, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Coalition for Fair Trade of Hardwood Plywood's Scope Rebuttal Brief (June 10, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Holland Southwest International Inc.'s Scope Rebuttal Brief (June 10, 2013); Hardwood and Decorative Plywood from the People's Republic of China: UFP Purchasing, Inc.'s Scope Rebuttal Brief (June 10, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Petitioners' Revised Scope Rebuttal Brief (June 17, 2013); and Hardwood and Decorative Plywood from the People's Republic of China: Shelter Forest International's Revised Scope Rebuttal Brief (June 17, 2013).

[6] See Letter to Acting Secretary Rebecca Blank, Request for Hearing on Scope-Related Issues Hardwood and Decorative Plywood from China (May 31, 2013).

[7] See Scope Issues for the Antidumping Duty and Countervailing Duty Investigations on Hardwood Decorative Plywood from the People's Republic of China: Case Nos. A-570-986 and C-570-987 (June 26, 2013).

[8] See Hardwood and Decorative Plywood from the People's Republic of China: Shenghua Yunfeng Import & Export Co. Ltd.'s Case Brief (July 1, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Wellmade Floor Industries Co., Ltd.'s Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Shamrock Building Materials, Inc.'s Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: the GOC's Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Liberty Woods International, Inc. et al's Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: JOC Yuantai International Trading Co., Ltd. et al.'s Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Senda's Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Zhejiang Dehua TB Import & Export Co., Ltd. et al.'s Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Hardwood Specialty Products USLP et al.'s Case Brief (July 29, 2013); Hardwood and Decorative Plywood from the People's Republic of China: Celtic Co., Ltd. et al.'s Case Brief (July 30, 2013); and Hardwood and Decorative Plywood from the People's Republic of China: Lianyungang Yuantai International Trade Co., Ltd.'s Case Brief (August 1, 2013).

August 5, 2013.[9] At the request of interested parties, a hearing concerning non-scope related issues was held on August 22, 2013.[10]

The "Subsidy Valuation Information" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we have analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we have made certain modifications to the Preliminary Determination for this final determination, which are discussed below under each program. Below is a complete list of the issues in this investigation for which we have received comments from the parties.

Comment 1: Application of Adverse Facts Available
Comment 2: "All-Others" Rate
Comment 3: Provision of Electricity
Comment 4: Initiation of the Investigation was Unlawful
Comment 5A: Solid Bamboo Products
Comment 5B: Bamboo Flooring
Comment 5C: Structural Plywood
Comment 5D: Very Thin Plywood
Comment 5E: Other Scope Issues
Comment 5F: Plywood with a Surface Other Than Wood

II. SUBSIDY VALUATION INFORMATION

A. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

B. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[11] The Department notified the respondents of the 10-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

[9] See Hardwood and Decorative Plywood from the People's Republic of China: Petitioners' Rebuttal Brief (August 5, 2013) and Hardwood and Decorative Plywood from the People's Republic of China: Liberty Woods International, Inc. et al.'s Rebuttal Brief (August 5, 2013).
[10] See Issues for the Countervailing Duty Investigations on Hardwood and Decorative Plywood from the People's Republic of China: Case No. C-570-987 (August 30, 2013).
[11] See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

C. Attribution of Subsidies

19 CFR 351.525(b)(6)(i) states that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a cross-owned firm supplies the subject company with an input that is produced primarily for the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to the cross-owned subject corporation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where "there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."[12] The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[13]

Senda reported being affiliated with several other companies. Given that the relevant facts include business-proprietary information, our determinations regarding whether cross-ownership exists between Senda and these affiliates are detailed in Senda's business-proprietary calculation memorandum.[14]

D. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, e.g., to the respondents' export or total sales. In some instances, the denominators used to calculate the countervailable subsidy rates for the various subsidy programs in the Preliminary

[12] See 19 CFR 351.525(b)(6)(vi).
[13] See Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[14] See Memorandum, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Senda Final Calculation Memorandum" (Senda Final Calculation Memorandum) dated concurrently with this memorandum.

Determination[15] have changed in this final determination. For details on the changes in denominators, see the Final Calculation Memoranda.[16]

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of this final determination, we continue to find it necessary to apply adverse facts available (AFA).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[17] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[18]

A. Application of AFA: Non-Cooperative Companies

In the instant investigation, 15 companies, which the Department confirmed received a quantity and value (Q&V) questionnaire, did not respond to the Department's Q&V questionnaire. In the Q&V questionnaire, the Department stated that if a response was not provided, the Department may find that non-responding companies failed to cooperate by not acting to the best of their ability to comply with the request for information. We stated that we may use an inference that

[15] See Memorandum, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Dongfang Preliminary Calculation Memorandum," February 26, 2013; Memorandum, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: San Fortune Preliminary Calculation Memorandum," February 26, 2013; and Memorandum, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Senda Preliminary Calculation Memorandum," February 26, 2013.

[16] See Memorandum, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Dongfang Final Calculation Memorandum," dated concurrently with this memorandum; see also Memorandum, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: San Fortune Final Calculation Memorandum," dated concurrently with this memorandum; see also Senda Final Calculation Memorandum (collectively, Final Calculation Memoranda).

[17] See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

[18] See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

is adverse to the interests of such uncooperative companies in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.

The non-responsive companies are listed in the "Suspension of Liquidation" section of the accompanying Federal Register notice. In the Preliminary Determination, we found these 15 companies to be uncooperative because of their failure to respond. By not responding to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, for the final determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we continue to assign a countervailing duty (CVD) rate to these 15 companies based on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to respond to the Department's Q&V questionnaire, these companies did not cooperate to the best of their ability in this investigation, and they withheld information necessary for the Department to conduct a full investigation. Furthermore, by failing to respond to the Q&V questionnaire, these companies avoided being selected and examined as mandatory respondents in this investigation in order to avoid having a subsidy rate calculation based on their use of the subsidy programs under investigation. Accordingly, we find that AFA is warranted to ensure that these companies do not obtain a more favorable result than had they cooperated fully with our request for information. From their lack of response and lack of cooperation, we may infer that these companies were producers and/or exporters of subject merchandise to the United States and received the subsidies alleged in this investigation.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) the final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record.

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment of the proceeding.[19] In CVD investigations, we use the highest rate calculated for the same or similar program in the instant proceeding or, if not available, in other CVD proceedings from that country.[20] Under this practice, for investigations involving the People's Republic of China (PRC), the Department generally computes the total AFA rate for uncooperative companies using program-specific rates calculated for the cooperative respondents in the instant investigation or in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program and the rate is not zero. If there is no identical program match within the

[19] See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" and Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012) (Steel Wire from the PRC), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

[20] See, e.g., Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate" and Steel Wire from the PRC.

investigation, the Department uses the highest non-de minimis rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-de minimis subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that conceivably could have been used by the non-cooperating companies.[21] For income tax rate reduction and exemption programs, we apply one single rate for all these programs using the standard income tax rate for corporations in the PRC filing income tax returns during the POI which was 25 percent.

On this basis, we determined an AFA subsidy rate of 27.16 percent ad valorem for these 15 companies in the Preliminary Determination.[22] As discussed below in Comment 1, the Department has not made any changes to this AFA rate for this final determination.

B. Application of AFA: Provision of Electricity for Less Than Adequate Remuneration

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for less than adequate remuneration (LTAR).[23] These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific with the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the February 5, 2013 supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals for increases in electricity rates led to retail price increases for electricity; (2) how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no province-specific information in response to these questions in its initial questionnaire response.[24] The Department reiterated these questions in a supplemental questionnaire and the GOC again did not provide the requested information in its supplemental questionnaire response.[25]

At the Preliminary Determination, we determined that the GOC withheld necessary information that was requested of it and, thus, we relied on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determined that the GOC had failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to

[21] See, e.g., Aluminum Extrusions from the PRC and Steel Wire from the PRC.
[22] See Memorandum, "Hardwood and Decorative Plywood from the People's Republic of China Preliminary Countervailing Duty Determination: Application of Adverse Facts Available to Non-Responsive Companies," February 26, 2013.
[23] See the GOC's Initial Questionnaire Response (February 1, 2013) at 7; see also the GOC's First Supplemental Questionnaire Response (February 12, 2013) at 1-3.
[24] See the GOC's Initial Questionnaire Response (February 1, 2013) at 7.
[25] See the GOC's First Supplemental Questionnaire Response (February 12, 2013) at 1-3.

gather and provide such information. For the same reasons, an adverse inference continues to be warranted in the application of facts available under section 776(b) of the Act for this final determination. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting the benchmark for determining the existence and the amount of the benefit. The benchmark rates we have selected are derived from the highest electricity rates on the record of this investigation for the applicable rate and user categories.[26]

IV. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

1. Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of electricity, in part, on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. In this case, Dongfang, San Fortune, Senda and Senda's cross-owned company Shanghai Materials provided data on the electricity the companies consumed and the electricity rates paid during the POI.[27]

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We find that, in not providing the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC pursuant to section 776(b) of the Act and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act. To determine the existence and amount of any benefit from this program, we relied on the respondents' reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POI. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (e.g., "General Industry," "Lighting," "Base Charge/Maximum Demand") for the general, high peak,

[26] See Final Calculation Memoranda.
[27] See Dongfang Verification Report; see also San Fortune Verification Report; Senda Verification Report.

peak, normal, and valley ranges, as provided by the GOC.[28] The electricity rate benchmark chart is included in the Final Calculation Memoranda. The selected benchmarks reflect an adverse inference, which we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether the respondents received a benefit under this program, we first calculated the monthly per unit electricity rates paid by respondents for each reported electricity category by dividing the reported value paid by the reported consumption. Next, we identified the monthly per-unit electricity benchmark rate for each usage category, based on the information reported by respondents. We then subtracted the calculated usage rate from the benchmark rate to identify a per-unit benefit. To obtain the monthly benefit for each usage category, we then multiplied the calculated per-unit benefit by the reported monthly consumption. To calculate the total benefit for each company during the POI, we summed the monthly benefits for each usage category. Arguments regarding the calculation and selection of the electricity benchmark and are further addressed in Comment 3: Electricity.

To calculate the subsidy rate pertaining to the GOC's provision of electricity for LTAR, we divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the "Subsidy Valuation Information" section above, and in the Final Calculation Memoranda. On this basis, we determine a countervailable subsidy of 0.25 percent ad valorem for Dongfang, 0.22 percent ad valorem for San Fortune, and 0.65 percent ad valorem for Senda and its cross-owned companies.[29]

B. Programs Determined Not to Be Used or Not to Confer a Benefit During the POI[30]

1. Tax Exemptions and Reductions for "Productive" Foreign Invested Enterprises (FIEs)
2. Provincial Tax Exemptions and Reductions for "Productive" FIEs
3. Tax Reduction for FIEs in Designated Geographic Locations

The Department has determined that these programs were not used or did not confer a benefit to Dongfang, San Fortune, or Senda and its cross-owned companies during the POI.

4. Value Added Tax and Tariff Exemptions on Imported Equipment

Senda reported that it received exemptions under this program during the AUL. The exemptions were approved and received prior to the POI, and the total value of the exemptions in each year was less than 0.5 percent of the appropriate sales value in the year of receipt. Therefore, in the Preliminary Determination, the benefits were expensed in the year of receipt and no benefit was conferred under this program during the POI.

[28] See the GOC's Supplemental Questionnaire Response at Exhibits S-1 - S-3 (February 12, 2013).
[29] See Final Calculation Memoranda.
[30] Both San Fortune and Senda received grants in years prior to the POI. See, e.g., San Fortune Verification Report at 6 and Senda Verification Report at 8. However, based on the results of the "0.5 percent test," these grants were expensed in the year of receipt and were not attributable to the POI. Therefore, we find that these grants did not confer benefits during the POI.

V. ANALYSIS OF COMMENTS

Comment 1: Application of Adverse Facts Available

GOC's, Respondents' and Other Interested Parties' Arguments

- The Act provides that a party is assigned a CVD rate based on whether it is "individually investigated" or falls among "all-others." The issuance of Q&V questionnaires to determine the scope of individually investigated companies does not overcome the statutory limitation that parties are either "individually investigated" or fall into the "all-others" category.
- The 15 AFA companies should be put in the "all-others" category and receive the de minimis rate, which in-turn would terminate this investigation.
- Should an AFA rate be applied to these 15 companies, the rate must be re-calculated, as the Department's selection of facts available in calculating the AFA rate is not supported by substantial evidence. Specifically, record evidence demonstrates that ten of the 15 AFA companies are not FIEs, and thus are not eligible for the three FIE designated income tax programs under investigation.
- The combined 25 percent rate assigned for the three income tax programs is flawed, as this presumes that sales revenue is equivalent to taxable income. The Department has never calculated a rate close to 25 percent for an income tax program; thus this rate cannot be corroborated.
- The Department should not have rejected new factual information which was highly relevant to the reliability of the adverse inferences that were inappropriately attributed to the "all-others" applicants.
- The Department must eliminate the use of AFA for the group of 15 non-responding companies, as the Department never made these companies aware that their responses were deficient.
- Wellmade Floor Industries Co., Ltd. (Wellmade), a company that received an AFA rate in the Preliminary Determination, did not receive the Q&V questionnaire, and thus it should not receive the AFA rate.

Petitioners'[31] *Rebuttal Arguments*

- The Department was correct in not allowing the companies to file Q&V responses after the Preliminary Determination was issued.
- The Department was correct to apply a 25 percent rate as AFA to the combined tax programs at issue in this investigation.
- Respondents' argument that the 25 percent rate should not apply to certain nonresponsive companies since these companies supposedly are not FIEs is incorrect. The accuracy of the documentation submitted by the GOC to demonstrate that these companies were not FIEs cannot be verified.

Department Position: We continue to find that the application of AFA to the 15 uncooperative companies is warranted. The Department's mandated authority to apply AFA to uncooperative parties is explicitly set forth under section 776 of the Act. These companies chose not to participate in this investigation, and thus application of AFA is warranted. By failing to provide

[31] The petitioners in this investigation are the Coalition for Fair Trade of Hardwood Plywood (Petitioners)

information regarding their quantity and value of shipments during the POI, the Department was unable to evaluate the full universe of potential respondents. Therefore, consistent with the Preliminary Determination and past practice,[32] each of these 15 non-cooperative companies is subject to a rate based on AFA. If these companies had provided the information necessary for determining the most appropriate mandatory respondents, it is possible that any three of them would have been selected as the mandatory respondents instead of the three who were ultimately selected.[33] Absent the application of AFA to these uncooperative companies, any company would be able to assure itself of a lower "all-others" rate determined for the cooperative companies, without having to undertake the risks involved in possibly being fully investigated, simply by refusing to respond to a request for quantity and value data. Basing rates for these companies on AFA is warranted regardless of how they are considered under section 705(c)(1)(B)(i)(I) of the Act.

The arguments offered by respondents for not applying AFA are unpersuasive. We cannot make a determination regarding a company's eligibility for an FIE subsidy program without a full investigation. The information provided by the GOC regarding the FIE status of some of the 15 companies (or lack thereof) is not an adequate substitute for a full investigation. A full investigation of these companies might have disclosed that although the companies themselves were not eligible for FIE subsidies, their cross-owned affiliates were eligible.[34] Likewise, with respect to the untimely filed factual information concerning some of these companies, information submitted concerning the business scope of the companies would need to be investigated and possibly verified before the Department could establish whether or not these companies reasonably determined a response to the Q&V questionnaire was unnecessary.[35] This information, moreover, was submitted long after the due date for the Q&V questionnaires. Indeed, this information was submitted after the preliminary determination. Thus, insofar as it attempts to serve as a response to the Q&V questionnaires, was properly rejected as untimely factual information.[36]

---

[32] See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 64313 (October 18, 2011) (Multilayered Wood Flooring) and accompanying Issues and Decision Memo (Multilayered Wood Flooring IDM) at Comment 5.

[33] The respondents attempt to dismiss the failure of the 15 companies to respond to the Q&V questionnaire as somehow trivial. They also note that this same burden was placed on both the cooperative "all others" and the 15 AFA companies, as though that somehow implies both groups must be placed into the same rate category (i.e., "individually investigated" or "all others"). The failure to respond to the Q&V questionnaire is no trivial matter. As explained, in cases such as this, the Q&V questionnaires form for the basis for choosing the proper respondents under the Act. If a company fails to respond to a Q&V questionnaire, the obvious inference we draw is that it assumed its calculated rate as a mandatory respondent would exceed the rate it otherwise would receive and thus evaded selection. Of course which companies we choose as mandatory respondents has important consequence for all other producers and exporters as well.

[34] See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment C:2, page 68 (an FIE is cross-owned with a state-owned enterprise (SOE) such that the combination of the two enjoy both FIE and SOE benefits).

[35] To the extent that these companies do not produce or export subject merchandise, it is unclear why they should object to receiving the AFA rate.

[36] See Letter from the Department to Zhejiang Desheng Wood Industry Co., Ltd. et al. "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Rejection and Removal of Submission from the Record" (May 2, 2013).

The Department had no obligation under section 782(d) of the Act to notify the 15 companies of their "deficiency." The application of AFA to companies that fail to respond to Q&V questionnaires – with no "second bite at the apple" – is the Department's practice.[37] An unambiguous refusal to provide a timely response to a questionnaire, in whole or in part, without any timely explanation as to why a timely response may have been impracticable, does not constitute a mere "deficiency" under any reasonable interpretation of this term within the context of section 782(d) of the Act. In other words, a complete lack of response is not a "response to a request for information … {that} does not comply with the request" within the meaning of section 782(d) of the Act. Consistent with our practice,[38] we confirmed that all Q&V questionnaires were either received or that delivery was rejected, including the Q&V questionnaire delivered to Wellmade, and there is no reason to reject the receipt confirmation provided by FedEx,[39] despite Wellmade's claims to the contrary.

Finally, we are not revising the AFA rate determined in the Preliminary Determination to incorporate a lower rate for the three income tax programs under investigation. The Department's objective in determining an AFA rate for uncooperative companies is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[40] In fulfilling this objective, the Court of Appeals for the Federal Circuit (Federal Circuit) has recognized the Department must select a reasonable rate with "some built-in increase intended as a deterrent to non-compliance."[41] The alternative rates proposed by the respondents, ranging from 0.34 to 9.24 percent, could not, in the Department's view,[42] satisfy the Department's objective of ensuring compliance. In order to fulfill the required legal objectives of the AFA rate, the Department has consistently used the income tax rate as established under the PRC's corporate income tax law. Since CWP from the PRC,[43] the Department has applied the corporate tax rate applicable in the country under investigation as the combined AFA rate for income tax programs (previously 33 percent and currently 25 percent in the PRC). Despite the consistency of this practice and the virtual certainty of an AFA rate of at least 25 percent, the 15 companies still chose not to cooperate. Therefore, we continue to determine that 25 percent is a reasonable AFA rate for PRC income tax programs combined.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at

[37] See, e.g., Multilayered Wood Flooring IDM at Comment 5 (page 46).
[38] Id. at 3.
[39] See Memorandum to the File from Lingjun Wang, Analyst Office 6 AD/CVD Operations "Hardwood and Decorative Plywood from the People's Republic of China: Delivery Confirmation of Quantity and Value Questionnaire" at the Attachment (December 4, 2012).
[40] See SAA at 870; see also F.lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (the purpose of section {776(b) of the Act} is to provide respondents with an incentive to cooperate).
[41] See Gallant Ocean (Thai.) Co. v. United States, 602 F.3d 1319, 1323 (Fed. Cir. 2010) (quoting De Cecco, 216 F.3d at 1032).
[42] See Daewoo Elec. Co. v. Int'l Union, 6 F.3d 1511, 1516 (Fed. Cir. 1993) (as the authority charged with administering the Act, the Department is entitled to substantial deference in its choice of selecting an adverse rate to induce cooperation).
[43] See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966, 31968 (June 5, 2008) (CWP from the PRC).

its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value. The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA. As discussed above, due to the failure of the 15 AFA companies to cooperate, the Department selected the highest possible tax rate that could be forgiven as the AFA rate for the combined benefits from income tax programs. As confirmed during verification, the corporate income tax rate is 25 percent.[44] The AFA rates for the other programs reflect the actual behavior of the GOC with respect to similar subsidy programs in this or other proceedings.[45] Lacking questionnaire responses or adequate information from the 15 AFA companies demonstrating otherwise, all of the AFA rates we are using constitute non-punitive and reasonable AFA rates.

Comment 2: "All-Others" Rate

GOC's, Respondents' and Other Interested Parties' Arguments

- The Department can only use the rates of individually-examined companies in computing the "all-others" rate. The Department cannot treat the non-responsive companies as "individually investigated" while treating the cooperating companies as non-individually-investigated "all others".
- In Bestpak,[46] the Federal Circuit found the Department's separate rate calculation (averaging the zero rate of the cooperating mandatory respondent with the AFA rate of the non-cooperating mandatory respondent) to be unreasonable.
- The Act specifically allows for the Department to average the subsidy rates even when those rates are de minimis. The de minimis rates of the individually examined respondents are the only rates that should be considered in computing the "all-others" rate.
- If the Department keeps the AFA rate for the 15 non-responsive companies, it should assign individual rates to all parties who submitted Q&V questionnaire responses. For those parties who fully cooperated, their rate should be de minimis.

[44] We reviewed Dongfang's, San Fortune's, and Senda's official income tax returns during verification and all of the returns clearly state that the PRC-wide income tax rate for corporations is 25 percent. See Dongfang's Verification Report at 6; see also San Fortune's Verification Report at 8; Senda et al.'s Verification Report at 13.

[45] The AFA rate for the provision of eelectricity for LTAR is not secondary information in the first place because it is based on the benefits received by a respondent company in this investigation.

[46] See Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States, 716 F.3d 1370 (Fed. Cir. 2013) (Bestpak).

- The Department's "all-others" rate is not produced using a reasonable method and does not reflect economic reality. The AFA rate was never applied to an individually investigated company; therefore it cannot be included in the "all-others" rate.
- Alternative "all-others" rate calculation possibilities include: (1) assign a zero rate to the cooperating companies; (2) average one AFA rate with three zero rates for the mandatory companies; (3) weight average the 15 AFA companies with 87 zero rates for the companies who responded to the Q&V questionnaires; and (4) weight average using U.S. Customs and Border Protection (CBP) data on the record.

Petitioners' Rebuttal Arguments

- The decision in Bestpak affirmed the Department's methodology of using a simple average of de minimis rates and AFA rates in determining an "all-others" rate.
- The methodology employed by the Department for assigning an "all-others" rate was reasonable because it accounts for the three de minimis recipients while acknowledging a larger pool of companies that are presumed to have received countervailable subsidies.
- The circumstances in this investigation are similar to those in the Lined Paper from India AD review.[47] In that review, the Department concluded that the zero rates for the two mandatory respondents alone did not serve as a proper basis for determining a rate for companies who responded to the Q&V questionnaire.
- The Department should affirm the preliminary methodology for calculating the "all-others" rate if the mandatory respondents' rates remain de minimis for the final determination.
- Without information regarding the volume and value of these companies' exports of subject merchandise, the Department did not know what percentage of total subject imports these companies accounted for during the period of investigation nor could the Department use weighted-averaging to calculate the margin for companies in the "all-others" group.
- The Department had no choice but to perform a simple average based on the information on the record. Therefore, the fault lies not with the statute or the methodology, but with the companies themselves for not responding.
- The Department's assignment of the "all-others" rate was balanced and reasonable because it accounts for the three de minimis recipients, while also acknowledging the fact that there is a much larger pool of companies that are presumed to have received countervailable subsidies.

Department Position: As explained above, the Department continues to rely upon AFA in determining the subsidy rate for the 15 uncooperative companies. As a change from the Preliminary Determination, and consistent with a recent review of Lined Paper from India, we are averaging the three de minimis rates calculated for the mandatory respondents with three AFA rates, rather than the 15 rates from the Preliminary Determination. As we stated in Lined Paper from India:

> We have determined that a reasonable method for assigning a margin to non-selected respondents in this review is to utilize the weighted-average dumping margins calculated for the two mandatory respondents (zero percent) and the AFA rate assigned to the four

[47] See Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 22232 (April 15, 2013) (Lined Paper from India) and accompanying Issues and Decision Memorandum (Lined Paper from India IDM).

> uncooperative companies (22.02 percent). By doing so, we account for the fact that the Department was precluded from conducting its respondent selection analysis based on responses to all of the Q&V questionnaires issued. Furthermore, we have limited the number of rates used in the average that are based on AFA due to failures to respond to the Q&V questionnaires to the same number of companies that we determined we could reasonably examine in this review, which was two. We consider this reasonable because, without the requested information from these companies, all we know is that we may have selected up to two of these companies as mandatory respondents. Accordingly, we determined in the instant review the non-selected rate by taking the simple average of the rates calculated for the two selected mandatory respondents and two AFA rates for companies that failed to respond to the Q&V questionnaire.[48]

Contrary to the respondents' argument that the Department may only use the AFA rates in the determination of the "all-others" rate if the AFA companies are considered individually investigated, section 705(c)(5)(A)(ii) of the Act provides that the Department may rely on any reasonable method in determining the "all-others" rate when all calculated rates are de minimis or based entirely on facts available. Thus, as sanctioned by the statute, we used the methodology described in Lined Paper from India, and determined the "all-others" rate by averaging the de minimis rates calculated for the three mandatory respondents and the AFA rates assigned to three of the uncooperative Q&V companies. Whether the uncooperative Q&V companies are considered "all others" or "individually-investigated" companies that failed to cooperate, the Act provides that the Department may take into account respondents' lack of cooperation when a company withholds information and fails to cooperate to the best of its ability.[49] In this investigation, the uncooperative Q&V companies have satisfied the statutory criteria for the application of AFA. That is, the total lack of cooperation on the part of the uncooperative Q&V companies justifies the distinct treatment of the uncooperative Q&V companies as compared to the "all others" companies, regardless of whether the uncooperative Q&V companies are considered "all others" or "individually-investigated." Furthermore, section 705(c)(5)(A)(ii) of the Act explicitly contemplates the inclusion of AFA rates within the rates averaged to apply as an "all-others" rate when, as here, all the mandatory respondents have received de minimis margins. Therefore, in determining the "all-others" rate, we are using any "reasonable method" under section 705(c)(5)(A)(ii) of the Act, and we continue to rely, in part, on the AFA rate determined for the uncooperative companies. Based on this revision, we have determined an "all-others" rate of 13.58 percent.

We disagree with the respondents that Bestpak prevents us from relying on AFA in determining an "all-others" rate. First, the Bestpak decision examined the use of AFA in determining an "all-others" rate in an antidumping (AD) investigation involving a non-market economy (NME) country. Although the Bestpak litigation is not complete and a remand is still pending, it would not appear to be relevant to the use of AFA in determining the "all-others" rate in a CVD investigation. The CVD AFA methodology relies on subsidies calculated for cooperative respondents in past proceedings and the statutory PRC corporate tax rate. Thus, CVD AFA rates are by design based on the actual or potential experience of cooperative companies operating in the same foreign market and using the same government programs. Unlike in Bestpak, the AFA

[48] See Lined Paper from India IDM at 14-15.
[49] See sections 776(a) and (b) of the Act.

rate is not a rate drawn from the petition. Thus, the Bestpak requirement that an "all-others" rate be tied to "economic reality" is satisfied by the CVD AFA methodology. Further, in a CVD proceeding, there is no NME-wide rate for exporters presumed to be subject to the NME entity's control, and therefore the Federal Circuit's Bestpak concern,[50] with respect to assigning a cooperative company a rate that is half the NME-entity rate, is not relevant in a CVD proceeding.

Additionally, as Petitioners note, the Federal Circuit clearly stated that inclusion of an AFA margin in determining an "all-others" rate may be appropriate as a "reasonable method" under section 705(c)(5)(A)(ii) of the Act.[51] Indeed, the Act contemplates the inclusion of an AFA rate under "any reasonable method."[52] Based upon the record in this investigation, the Department finds that a "reasonable method" is to average the three mandatories' de minimis rates and three of the AFA rates. We believe our reliance on AFA, in part, is reasonable under section 705(c)(5)(A)(ii) of the Act. The rates selected as AFA are rates calculated for cooperative respondents in prior investigations and the 25 percent rate provided for by law. Thus, these rates, based on the actual experience of PRC companies using the same or similar programs under investigation, and the statutory PRC corporate tax rate, clearly represent the reality of subsidization in the PRC.

Finally, we agree with Petitioners that we have inadequate information for weight averaging the rates combined into the "all-others" rate. The fact that the 15 AFA companies did not respond to the Q&V questionnaire means we do not have accurate shipment data for these companies.[53] Moreover, under the Lined Paper from India method described above, we are not relying on any particular uncooperative company in determining the "all-others" rate; we are instead relying on three AFA rates for no particular companies under as a "reasonable method."[54] We note also that all parties agree that the CBP data on the record of this investigation is unreliable.

[50] See Bestpak, 716 F.3d at 1379.
[51] Id. at 1378.
[52] Id.
[53] See Memorandum to Christian Marsh Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Respondent Selection" at 2 (December 19, 2012).
[54] The respondents have brought several challenges with respect to the application of AFA to the 15 companies. Although these challenges affect certain of the AFA companies, we note that respondents have presented no evidence challenging whether it was appropriate to apply AFA to at least three of the companies (i.e., even assuming, arguendo, that the respondents are correct and a number of the 15 companies are either not eligible for FIE benefits or do not produce or export subject merchandise, there are still at least three companies subject to the AFA rate). Thus, it is appropriate to consider the AFA rate for three companies in the "all others" calculation.

Comment 3: Provision of Electricity

GOC's, Senda's, and Liberty Woods et al.'s Arguments

- A finding against the GOC is not grounds for imposing penalties against the mandatory or "all-others" rate respondents in this case.[55] The Department must revise its calculation of the subsidy rates for the electricity program to remove AFA entirely.
- If the Department continues to apply the efficiency adjustment to Senda's electricity payments, it should also adjust the electricity benchmarks to account for the efficiency adjustments.
- The Department should apply the large industrial user category benchmarks to Senda's electricity benefit calculations as record evidence demonstrates the company would be in this category outside of Shanghai; this is also consistent with Multilayered Wood Flooring.[56]
- The Department should not countervail Shanghai Material's and Bailian Group's electricity usage.

Department Position: The Department's responses to each of the electricity arguments are as follows:

Adverse Facts Available

The Department disagrees that we must remove an adverse inference from the electricity calculation for the respondents' and the "all-others" rates. For these final results, we are continuing to calculate a subsidy for electricity for LTAR based upon partial adverse inferences as a result of the GOC's failure to provide requested information.

As discussed above in the sections regarding "Application of AFA: Provision of Electricity for Less Than Adequate Remuneration," and "Provision of Electricity for LTAR," in a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.[57] As in past cases, the GOC did not provide the information we requested, so we have found that the program provides a countervailable subsidy

[55] See Tianjin Magnesium Int'l Co. v. United States, Slip. Op. 2011-17, 2011 CIT Lexis 16 (CIT 2011) (Tianjin) (holding that "{t}he court cannot accept a construction of 19 U.S.C. § 1677e(b) under which the party who suffers the effect of the adverse inference is not the party who failed to cooperate") (quoting SKF USA Inc. v. United States, 675 F. Supp. 2d 1264, 1275, 1277 (CIT 2009)); see also Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (holding that in order to make an adverse inference against any respondent under Section 1677e(b), the Department "must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information.").

[56] See Multilayered Wood Flooring IDM at 45.

[57] See Essar Steel Ltd. v. United States, 721 F. Supp. 2d 1285, 1297 (CIT 2010) (Essar), aff'd in part, rev'd in part on other grounds 678 F.3d 1268 (Fed. Cir. 2012) ("Where the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry."). See also Archer Daniels Midland Co. v. United States, 917 F. Supp. 2d 1331, 1341-42 (CIT 2013) (Archer Daniels) (finding that "absent alternative satisfactory evidence on the record, it is in accord with law for Commerce to apply AFA to the GOC even though a cooperating party may be adversely impacted").

to the respondents.[58] During this investigation, we asked the GOC to provide a detailed explanation for each province where the three mandatory respondents are located of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.[59] The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.[60]

We disagree that the Department cannot apply adverse inferences in a CVD case where the government of the country being investigated fails to reply to any of the Department's questionnaires, but the mandatory respondents have supplied certain information. The problem with this argument is that it prohibits the Department from effectively determining whether a financial contribution is provided by the government, and whether the benefit is specific.[61] The Department often relies upon information that only the government could possess.

Because the requested cost and price information are part of the GOC's electricity price adjustment process,[62] the documents are necessary for the Department's analysis of the program. Accordingly, we are applying an adverse inference, and using the highest rates on the record of this proceeding to determine the benefit that the respondents received. The SAA states that:

> {n}ew section 776(b) permits Commerce and the Commission to draw an adverse inference where a party has not cooperated in a proceeding. A party is uncooperative if it has not acted to the best of its ability to comply with requests for necessary information. Where a party has not cooperated, Commerce and the Commission may employ adverse inferences about the information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.

We determine that the GOC, as an interested party and a respondent party to this proceeding, failed to cooperate to the best of its ability because it failed to put forth its maximum efforts to obtain the requested information. Accordingly, the Department is applying AFA in determining whether the provision of electricity provided a financial contribution that was specific.

---

[58] See, e.g., Drill Pipe From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011, 78 FR 47275 (August 5, 2013) and accompanying Issues and Decision Memorandum (Drill Pipe from the PRC IDM) at "GOC – Provision of Electricity for LTAR;" see also Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013) and accompanying Issues and Decision Memorandum (Steel Sinks from the PRC IDM) at "GOC – Provision of Electricity for LTAR."

[59] See GOC's Initial Questionnaire Response at 7 (February 1, 2013).

[60] See GOC's First Supplemental Questionnaire Response (February 12, 2013) at 1-3.

[61] See Essar, 721 F. Supp. 2d at 1297; Archer Daniels, 917 F. Supp. 2d at 1341-42.

[62] See, e.g., Certain Magnesia Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 45472 (August 2, 2010) and accompanying Issues and Decision Memorandum at Comment 8, wherein the Department quoted the GOC as reporting that these price proposals are part of the price setting process within China for electricity.

In addition, we disagree with the interpretation of Tianjin. As an initial matter, that case involved an AD proceeding where the producer that failed to provide the cost of production information was not a named party to the proceeding to which the Department sent questionnaires. Importantly, and contrary to the holdings there, the Federal Circuit has explained in KYD, Inc. that importers may have to pay enhanced AD duties because of the uncooperativeness of interested parties from whom they purchase goods.[63] Like the importer in KYD, Inc., the exporters in CVD proceedings are dependent upon the cooperation of their government.[64] Indeed, the CIT has affirmed the Department's authority to rely on AFA to find a financial contribution and specificity when the government in a CVD proceeding fails to cooperate to the best of its ability, notwithstanding the effect on cooperating respondent companies. In Essar, the CIT explained that "{w}here the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry."[65] More recently, in Archer Daniels, the CIT followed Essar and affirmed the Department's reliance upon AFA, as a result of the GOC's failure to provide information relevant to the "financial contribution" element of a subsidy, even though the respondent company had cooperated.[66]

Notwithstanding the foregoing discussion of the Department's authority to apply adverse inferences, where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable. As in the Preliminary Determination, we have found this to be the case for this final determination.

Efficiency Adjustments

With respect to Senda's contention that the Department should adjust the methodology of accounting for efficiency adjustments in the electricity benefit calculations by subtracting the efficiency adjustment from the electricity benchmarks, we disagree. We concur that section 771(5)(E)(iv) of the Act requires the Department to consider prevailing market conditions when calculating the benefit conferred. However, Senda points to no record evidence to support its statement that the efficiency adjustments are "a reduction in electricity charges that Senda would pay in any province."[67] Consequently, the Department has no basis for concluding that electricity efficiency adjustments are "prevailing market conditions" within the PRC. Accordingly, with no evidence which indicates that an electricity efficiency adjustment is standard procedure or is a standard adjustment factor across industries and/or provinces, we cannot conclude that the efficiency adjustments received by respondents are part of prevailing market conditions that must be accounted for in the electricity benchmark. As such, we have made no changes to our treatment of electricity efficiency adjustments from the Preliminary Determination with respect to the rates paid by respondents or the benchmarks applied in the benefit calculations.

---

[63] See KYD, Inc. v. United States, 607 F.3d 760 (Fed. Cir. 2010) (KYD, Inc.) at 768.
[64] See Drill Pipe from the PRC IDM at "GOC – Provision of Electricity for LTAR;" see also Steel Sinks from the PRC IDM at "GOC – Provision of Electricity for LTAR."
[65] See Essar, 721 F. Supp. 2d at 1297.
[66] See Archer Daniels, 917 F. Supp. 2d at 1342 (noting that the respondent company was "dependent on" the GOC's responses and when the GOC failed to respond and cooperate, an adverse inference was warranted to find that an entity was an "authority" that could provide a financial contribution).
[67] See Senda's Case Brief at 4.

Senda's Rate Category

The Department agrees with the GOC and Senda that we should use the large industrial user category electricity rates as benchmarks for calculating Senda's electricity rate.

Information timely submitted by the GOC and Senda after the Preliminary Determination shows that the Shanghai Price Bureau of the National Development and Reform Commission mandated a merger of the industrial and commercial user categories in June 2008.[68] This explains why the user categories for Shanghai are not consistent with those in other provinces such as Zhejiang, which had separate categories for large and general industry during the POI. Moreover, Senda and the GOC have demonstrated that Senda's transformer capacity places it within the capacity parameters of the large industry category. Finally, prior to merging its user categories, the Shanghai Electric Company classified Senda as a large industry user.[69] Based on this information, we find that the large industry user category provides the appropriate benchmark for calculating a benefit from Senda's purchases of electricity during the POI. As noted by both the GOC and Senda, this decision is also consistent with the Department's prior practice in Multilayered Wood Flooring.[70]

Senda's Affiliates' Electricity Use

We disagree with Senda's position that we should not countervail the electricity usage of its cross-owned affiliates. It is the Department's practice to countervail programs used by the cross-owned affiliates of respondents as well to include any such benefits earned by the cross-owned companies in the calculated rate of the respondent.[71] In the instant investigation, we have determined that Shanghai Material and Bailian Group are cross-owned affiliates of Senda; therefore, to the extent that it is possible, any benefits earned by either company will be included in Senda's overall calculated rate. Our analysis regarding cross-ownership relies on business proprietary information. We have included a discussion of Senda's relationship with Bailian Group and Shanghai Material in Senda's final calculation memorandum.[72]

We obtained information regarding Shanghai Material's and Bailian Group's POI electricity usage during verification.[73] As noted in the verification report, both companies have various offices that incur electricity expenses.[74] Information obtained at verification indicates that most of these satellite locations pay for their electricity as part of their rent or property management fees.[75] However, one of Shanghai Material's satellite offices contracts directly with the utility company for its electricity and thus has its rates established under the government-set tariffs

[68] See Government of China's Electricity Factual Information Submission: Hardwood and Decorative Plywood From the People's Republic of China (C-570-987) at Exhibit 4 (June 4, 2013).
[69] See New Factual Information Filing in the Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China at Attachment 1 (June 4, 2013).
[70] See Multilayered Wood Flooring IDM at 45.
[71] See 19 CFR 351.525(b)(6)(iii).
[72] See Senda Final Calculation Memorandum at "Cross-Ownership/Affiliation."
[73] See Senda Verification Report at 10-11.
[74] Id.
[75] Id.

schedule.[76] Therefore, this office has benefitted from the electricity LTAR program, and we have calculated a benefit and included that amount in Senda's overall electricity rate.[77]

Comment 4: Initiation of the Investigation was Unlawful

GOC's, Respondents' and Other Interested Parties' Arguments

- Petitioners included softwood products within the scope of the investigations, but did not include the domestic softwood plywood industry in the denominator of the industry support calculation in the petition. This was based on an unsubstantiated and speculative assumption that the entire softwood plywood industry makes only structural plywood.
- The Department declined to poll the domestic industry as requested and instead made conclusions based on speculation.
- The Department's initiation standard is overly lenient and allows AD investigations to proceed which are based on unsubstantiated allegations.
- Liberty Woods et al. raised concerns related to Petitioners' standing claims, but were shut out of the process by the Department's acceptance of and reliance on comments which were filed late on the final day of the 20-day initiation period.
- Because the Department's standing conclusion is evaluated based on the facts and conclusions as of the time of initiation, it would be unlawful for the Department to engage in backfilling the record with "the equivalent of post hoc rationalizations." This case is irreparably flawed.
- Petitioners' attempt to draw a line between hardwood and softwood products using U.S. Products Standard (PS) 1-09 for structural plywood is arbitrary and based on an assumption that all softwood plywood is structural. However, all softwood plywood is not structural.
- Petitioners and the Department failed to fully address the issues raised with regard to industry standing in a timely manner, or to allow sufficient time for parties to comment on Petitioners' submissions. The Department stated that "{w}e conducted a search of the Internet and have been unable to locate information that contradicts Petitioners' assertions," yet the Department did not memorialize this internet search in any way.
- The Act requires the Department to determine whether there is industry support for the petition within 20 days.[78] Both the law and the courts are clear that the Department's pre-initiation phase determination on industry support is final and cannot later be revisited or revised, absent a court order. The Department, therefore, cannot use the final determination in this proceeding to further justify its pre-initiation phase findings regarding industry support.
- The Department cannot supplement its reasoning from the pre-initiation phase at this point in the proceeding, however, that does not limit the court's power to review the industry support determination.[79]

[76] Id.
[77] See Senda Final Calculation Memorandum at "Provision of Electricity."
[78] Citing sections 1671a(c)(I)(A), (B), 1673a(c)(I)(A), (B) of the Act.
[79] See Downhole Pipe & Equip. LP v. United States, 887 F. Supp. 2d 1311, 1319 (CIT 2012) (citing PT Pindo Deli Pulp & Paper Mills, 825 F. Supp. 2d 1310, 1323 (CIT 2012)).

Petitioners' Rebuttal Arguments

- Petitioners made direct and documented responses to each and every assertion presented by Liberty Woods et al. during the pre-initiation phase and the Department's initiation memorandum cogently and comprehensively addressed every assertion – no matter how suspect or misleading – presented by Liberty Woods et al. at that time.
- The Department's decision to initiate this investigation based, in part, on its finding of sufficient domestic industry support was supported by substantial evidence on the record and otherwise in accordance with law.

Department Position: We disagree with the position that the initiation of this proceeding was unlawful. Pursuant to section 702(c)(4)(E) of the Act, interested parties may submit comments regarding industry support before initiation, and a determination regarding industry support shall not be reconsidered after the Department's initiation of an investigation. Thus, by law, policy, and practice the Department does not revisit the issue of industry support during an investigation.[80] As we are statutorily prohibited from revisiting the issue of industry support here, we incorporate our analysis and decision from the CVD Initiation here in this final determination.[81] Additionally, we note that interested parties Liberty Woods International, Inc., Wood Brokerage International, Patriot Timber Products, Inc., Northwest Hardwoods Inc., Canusa Wood Products Limited, American Pacific Plywood Inc., McCorry & Co. Ltd., Holland Southwest International Inc., Ike Trading Co., Ltd., Concannon Corporation, Inc., d/b/a Concannon Lumber Company, and Norcraft Companies LP, d/b/a Mid Continent Cabinetry (Liberty Woods et al.) do not argue that the Department can or should address the issue of industry support within the context of the final determination. Nevertheless, there are a few arguments that need to be addressed for clarification of the record.

At the time of initiation, the Department found that the industry support established by the petitions was adequate for the products which are covered by the scope of these investigations.[82] Although Liberty Woods et al. provided selective information from certain companies' websites during the initiation phase, it failed to provide any compelling evidence that had more probative value than a website, such as an affidavit from any of the companies that they were producers of softwood plywood which is not structural plywood that is included within the scope definition.[83] While Petitioners provided evidence to rebut/contradict the claims of Liberty Woods et al., and although this occurred on day 20, they merely placed on the record additional webpages to rebut the arguments of Liberty Woods et al. (i.e., to provide the Department with a complete picture of the website information placed on the record by Liberty Woods et al.). Additionally, Petitioners provided affidavits to contradict what Liberty Woods et al. had submitted, which we found to have more probative value than the website information submitted by Liberty Woods et al.

[80] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000) and accompanying Issues and Decision Memorandum at Comment 9.
[81] See Hardwood and Decorative Plywood From the People's Republic of China: Initiation of Countervailing Duty Investigation, 77 FR 64955, (October 24, 2013) (CVD Initiation); see also Countervailing Duty Investigation Initiation Checklist: Hardwood and Decorative Plywood from the People's Republic of China (October 17, 2012) (CVD Initiation Checklist) at Attachment II, "Analysis of Industry Support for the Petitions Covering Hardwood and Decorative Plywood from the People's Republic of China."
[82] See CVD Initiation Checklist at Attachment II.
[83] Id.

Although Liberty Woods et al. now claims that it was at a disadvantage because these affidavits were placed on the record on day 20, we note that Petitioners did not present any new facts/arguments – what they provided was tailored to rebut Liberty Woods et al.'s arguments. Further, although we did not memorialize the internet searches we referenced in the CVD Initiation Checklist on the record of this proceeding, Liberty Wood et al.'s only argument is that they did not have an opportunity to comment on the search. However, they are not arguing that there is other information on the internet that we ignored or failed to consider that would support their position.

Liberty Woods et al. claims that it was shut out of the process and not given the opportunity to address Petitioners' submissions with regard to industry standing. However, we find that Liberty Woods et al. submitted multiple rounds of comments, and met with Department officials. That Liberty Woods et al. failed to provide enough probative evidence to overcome information submitted by Petitioners that was reasonably available to them is not reason to find that they were effectively excluded from meaningful participation. Further, the information submitted by Petitioners on day 20 merely supported their consistent position that there are two distinct plywood industries in rebuttal to information submitted by Liberty Woods et al., not brand new information. As our final clarification on this issue, we note that Petitioners were clear throughout the initiation process that there are two distinct plywood industries (i.e., hardwood/decorative and softwood/structural), and we addressed those industries in the CVD Initiation Checklist.[84] Additionally, although Petitioners did not make a formal exclusion for structural plywood until day 18, the original Petition was clear that structural plywood was distinct from the products which are covered by the scope.[85]

Comment 5A: Solid Bamboo Products

Teragren LLC and Smith & Fong Company; Cali Bamboo, LLC; and Higuera Hardwoods, LLC's Arguments

- Products that are made from 100 percent bamboo should be excluded because they are not the same products as the products intended to be covered.

Petitioners' Arguments

- Products made entirely from bamboo and adhesives (also known as "solid bamboo") without any hardwood or softwood species should be excluded in the scope language.[86]

Department's Position: In deciding whether to initiate an investigation and whether an order should be imposed, sections 701 and 731 of the Act require the Department to define the scope of subject merchandise in each AD and CVD investigation. If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise

[84] Id.
[85] See, e.g., Petition for the Imposition of Antidumping and Countervailing Duties: Hardwood Plywood from the People's Republic of China at 6.
[86] See Letter to the Secretary of Commerce from Petitioners regarding scope clarification comments (April 24, 2013).

described in the petition to determine the scope of the final order.[87] The Department's legal authority to determine the scope of its orders is well established.[88]

We agree that products that are constructed of 100 percent bamboo and adhesive are not included in the scope of the investigations as Petitioners indicated this is not a product from which they seek relief. Thus, we are including in the scope an additional exclusion as follows: "The scope of these investigations excludes the following items: . . . (5) products made entirely from bamboo and adhesives (also known as "solid bamboo")." The Department notes however, that products which have face and/or back veneers of bamboo but have a core that is not bamboo are explicitly included in the language of the scope of the investigation. Accordingly, this exclusion only applies to products that have a face and a back veneer of bamboo and a core of bamboo, and which does not contain any other hardwood or softwood, or any other material in the core. The excluded products must be made from bamboo entirely, and adhesives.

Comment 5B: Bamboo Flooring

Teragren LLC, the Bamboo Flooring Companies[89] and Lumber Liquidators' Arguments

- Teregren LLC argues that finished, ready-to-install bamboo flooring should be excluded from the scope because it is a finished product rather than a raw material, and it is further worked beyond a flat panel because it has the tongue and groove profiles on the four sides.
- The Bamboo Flooring Companies argue that bamboo flooring should be excluded because: (1) it does not have wood veneers on the face and back; (2) flooring is further worked with a tongue and groove on the edges; (3) flooring comes in different sizes than plywood; and (4) bamboo is the essential characteristic.
- Lumber Liquidators argues that bamboo flooring should be excluded because: (1) there is very little being produced; (2) bamboo flooring and the merchandise under consideration have very different uses; (3) there are multiple different production processes used in constructing bamboo flooring which are different than those used to manufacture the merchandise under consideration.

Petitioners' Rebuttal Arguments

- Petitioners agree that multilayered wood flooring with a face veneer of bamboo is excluded from the scope of these investigations; however, Petitioners do not agree that any restrictions to the size or dimensions of the products covered should be included in the scope because the merchandise under consideration can be cut to size.

[87] See, e.g., Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17430 (March 26, 2012) and accompanying Issues and Decision Memorandum.
[88] See Diversified Products Corp. v. United States, 572 F. Supp. 883, 887 (CIT 1983) (acknowledging that Commerce "has the authority not only to define the scope of an antidumping duty investigation but also to clarify the statement of its scope") (internal citation omitted); see also Mitsubishi Elec. Corp. v. United States, 802 F. Supp. 455, 458 (CIT 1992).
[89] Anji Hefeng Bamboo & Wood Company, BR Custom Surface, ZT Industry, Co., Ltd. Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd., and Zhejiang Goldentouch Bamboo Technology Co., Ltd. (collectively "Bamboo Flooring Companies").

Department's Position: We agree that bamboo flooring is not included in the scope of the investigations as Petitioners indicate this is not a product from which they seek relief. Specifically, Petitioners have agreed with Teregren LLC and the Bamboo Flooring Companies that bamboo flooring is a product which is "separate and apart from hardwood and decorative plywood (with or without a bamboo face)."[90] Accordingly, we are amending the existing exclusion for wood flooring in the scope as follows: "The scope of these investigations excludes the following items: … (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A-570-970 and C-570-971 (published December 8, 2011), and additionally, multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo."

Comment 5C: Structural Plywood

Petitioners' Arguments

- It is Petitioners' understanding that all (or almost all) structural plywood is stamped at the place of manufacture, prior to importation into the U.S. If the scope allows products to be imported before they are stamped and tested it would open a route for circumvention of the order.
- Petitioners have no objection to including PS 2 in the scope language.

Taraca Pacific's Arguments

- The Department should include an explicit exclusion of PS 2-09 and PS 2-10 in the language of the scope.

Department's Position: In the AD Preliminary Determination, we agreed with Petitioners that the scope language properly states that only products which are manufactured and stamped to meet structural standards are excluded from the scope.[91] As no other parties have commented on the AD Preliminary Determination that products must be stamped in accordance with structural plywood standards prior to importation in order to be excluded, and Petitioners agree with the AD Preliminary Determination, we will not address this issue any further.

In the AD Preliminary Determination we stated that we preliminarily agreed with Taraca Pacific that products which are manufactured and stamped to meet PS 2-09 or PS 2-10 should be excluded from the scope of the investigation.[92] Additionally, we noted that Petitioners explicitly stated that they have no objection to excluding products which meet PS 2-09 or PS 2-10.[93] As we have not received any additional comments from interested parties, and because we understand that it was Petitioners' intent to exclude all structural plywood from the scope of the

[90] See Letter to the Secretary of Commerce from Petitioners regarding rebuttal scope brief (June 17, 2013) (Petitioners' Rebuttal Scope Brief) at 1-2.
[91] See Hardwood and Decorative Plywood from the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013) and accompanying Preliminary Decision Memorandum at 7 (AD Preliminary Determination).

[92] Id.
[93] Id.

investigation, we are amending the existing exclusion in the scope for structural plywood as follows: "The scope of the investigation excludes the following items: … (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured and stamped to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the "bond performance" requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard."

Finally, we note that the product standards which are specified as excluded from the scope include the following language:

> Certification: Plywood represented as being in conformance with this standard shall bear the stamp of a qualified inspection and testing agency which either inspects the manufacture (with adequate sampling, testing of bond line, and examination fur quality of all veneers) or (2) has tested a random sampling of the finished panels in the shipment being certified for conformance with this standard.[94]

Additionally, we note that all standards include language regarding the information that may or may not be included on any labels affixed to the product prior to shipment or retail sale (e.g., Section E3.2.1 of PS 1-09). However, any guidance regarding labeling does not replace or supplant the requirement that the products bear the stamp of a qualified inspection and testing agency. Only structural plywood which bears this stamp upon entry is excluded.

Comment 5D: Very Thin Plywood

Lumber One and Elberta's Arguments

- The domestic industry does not produce the very thin plywood (under 5.5 and 3mm) which Lumber One uses in constructing ammunition boxes for military use, and which Elberta uses in constructing boxes for agricultural products.
- The thin plywood used by Lumber One and Elberta is not used for indoor or decorative purposes.
- The adhesive used is an exterior grade and the product meets Petitioners' description of structural plywood.

Petitioners' Rebuttal Arguments

- Petitioners argue that Lumber One and Elberta's claims that the domestic industry does not manufacture very thin plywood are false.
- Lumber One and Elberta's assertion that certain adhesives are resistant to certain environmental factors should not be sufficient to conflate the product as "structural

[94] See Letter to the Secretary of Commerce from Petitioners, "Petition for the Imposition of Antidumping and Countervailing Duties, Supplemental Submission" (October 15, 2013) at Exhibit Supp I-16; see also Letter to the Secretary of Commerce from Taraca Pacific, Inc., "Comments on the Scope of the Investigation" (December 10, 2013) at Attachment 2.

plywood." Only products which are manufactured and stamped to a structural standard are excluded.

Department's Position: We do not agree with Lumber One and Elberta that very thin plywood should be excluded from the scope of these investigations. As an initial matter, the scope clearly states that "{a}ll hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length)." Although Lumber One and Elberta assert that the United States plywood industry does not produce the type of thin plywood they use, they have not provided evidence in support of their claim, and in fact, Petitioners have stated on the record that "more than one petitioning company currently manufactures products of these thicknesses."[95] Additionally, section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).[96] However, the neither the Act, nor the Department's regulations, require the domestic like product to be identical to the scope of the investigations. Further, despite Lumber One and Elberta's arguments that the "very thin" plywood they use is not produced by the domestic industry, there is no regulatory or precedential support for concluding that products which are not produced by the domestic industry cannot or should not be covered by the scope of the investigations.

Lumber One and Elberta also argue that their plywood is distinct from the merchandise subject to the scope of these investigations because it is not decorative, and is used to construct crates and boxes, which is not one of the stated uses of the merchandise under consideration. However, the Department has a general preference for scope definitions which are not dependent on the end-use of the product, to ensure ease of administrability for CBP to apply the scope upon importation. Products which meet the description of the language of scope of the investigations are necessarily covered by the scope, regardless of their intended use. Accordingly, Lumber One and Elberta's arguments that their products are not "decorative" are not sufficient for the Department to exclude merchandise which otherwise meets the description of the scope from these investigations.

Finally, Lumber One and Elberta argue that their very thin plywood is manufactured with a proprietary adhesive which is meant to withstand extreme moisture and temperatures. Therefore, Lumber One and Elberta argue that their plywood meets Petitioners' definition of structural or industrial plywood, which is excluded from the scope of these investigations. We agree with Petitioners that the use of certain adhesives is not sufficient to define Lumber One and Elberta's plywood as structural such that it should be excluded from the scope. The scope language specifically states that "The scope of these investigations excludes the following items: … (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured and stamped to meet U.S. Products Standards … for Structural Plywood…" The plywood Lumber One and Elberta use is neither manufactured nor stamped to any structural

[95] See Petitioners' Rebuttal Scope Brief at 3.
[96] See CVD Initiation at 65173.

standard. Therefore, we are not excluding the very thin plywood used by Lumber One and Elberta from the scope of these investigations because it meets the language and description of the scope and is a product from which Petitioners are seeking relief.

Comment 5E: Other Scope Issues

Petitioners' Arguments

- "Veneer cores" are effectively covered by the scope because the wooden outer layers of veneer cores are effectively the face and back veneers.
- Petitioners agree with the Department's preliminary determination that products carrying such supply-chain certifications as those provided by the Forest Stewardship Counsel (FSC) which otherwise meet the scope of the investigation are necessarily covered.

Department's Position: In their case brief, Petitioners commented on two issues which we addressed in the Preliminary Determination, stating that they agreed with the Department's position. Specifically, Petitioners agree with the Department's preliminary determination that veneer core platforms are essentially identical to the merchandise under consideration and that such merchandise is subject to the scope of this investigation. Additionally, the Department preliminarily determined that regardless of any supply-chain certification, the products which meet the plain language of the scope are necessarily a product for which Petitioners are seeking relief and are therefore subject to the scope of this investigation. No other parties have commented on these issues since the Preliminary Determination and there is no additional information on the record of these investigations which would require the Department to reconsider its preliminary determination with respect to veneer core platforms or FSC-certified products. Therefore, for this final determination, the Department continues to find that veneer core platforms are covered by the scope of the investigation, and FSC-certified products are not excluded from the scope of the investigation. Accordingly, we are not amending the language of the scope with regard to these products.

Comment 5F: Plywood with a Surface Other Than Wood

Petitioners' Arguments

- Plywood products with surface coverings such as paper provide an avenue for intentional circumvention.

CNFPIA, Far East American, Holland Southwest International Inc., Shelter Forest, and UFP Purchasing's Rebuttal Arguments

- The Department should not accept vague and tardy comments regarding the scope of the case. Petitioners cannot expand the scope of the investigation at this late stage by including products which have a surface coating such as paper. Additionally, Petitioners have an available remedy in the event of circumvention in the anti-circumvention provision of the statute.
- Petitioners' concerns regarding possible circumvention in the future is not an adequate reason to modify the scope as there are already existing remedies within existing laws and regulations.

- The paper-overlay products which are excluded do not compete with the products which Petitioners intended to be covered by these investigations, and the type of paper-overlay products which are under consideration have paper coverings which are permanently adhered to the outer surface of the product.
- The Department should continue to exclude products with surface coatings that obscure the grain and texture of the wood (e.g., phenolic film faced plywood and paper-overlay products), which are distinct from the scope of the investigation.

Department's Position: We agree with CNFPIA, Far East American, Holland Southwest International Inc., Shelter Forest, and UFP Purchasing that products which have an opaque surface coating which obscures the grain, texture or markings of the wood, are properly excluded from the scope of these investigations. Petitioners have not argued that products which have surface coatings which do obscure the grain, texture or markings of the wood were intended to be covered by the scope of these investigations. Additionally, the original description of the products which Petitioners intended to cover included products which had a face veneer which is "sanded, smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing" but did not include products which had opaque surface coatings, such as paper or phenolic film.[97] The types of surface coatings which the Department enumerated in the Preliminary Determination as surface coatings which may obscure the grain, texture or markings of the wood included paper, aluminum, high pressure laminate (HPL), medium-density fiberboard (MDF), medium density overlay (MDO), and phenolic film. Based on the descriptions of these products which were submitted by interested parties prior to the Preliminary Determination, all of these surface coatings are permanently affixed to the surface of the product.[98] Therefore, to ensure ease of administrability for CBP to apply the scope upon importation, we find it appropriate to clarify the language of the scope of these investigations such that the exclusion for plywood with opaque surface coatings applies only to coatings which are permanently affixed. Accordingly, we are amending the existing scope language with regard to surface coatings as follows: "{a}ll hardwood and decorative plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated, unless the surface coating obscures the grain, texture or markings of the wood in a permanent manner. Examples of surface coatings which may not obscure the grain, texture or markings of the wood include, but are not limited to, ultra-violet light cured polyurethanes, oil or oil-modified or water based polyurethanes, wax, epoxy-ester finishes, and moisture-cured urethanes. Hardwood and decorative plywood that has face and/or back veneers which have a permanent and opaque surface coating which obscures the grain, texture or markings of the wood, are not included within the scope of this investigation. Examples of permanently affixed surface coatings which may obscure the grain, texture or markings of wood include, but are not limited to, paper, aluminum, HPL, MDF, MDO, and phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. The face veneer may be stained."

[97] See CVD Initiation Checklist at Attachment I.
[98] See, e.g., Letter to the Secretary of Commerce from Far East "Scope Rebuttal Brief" (June 10, 2013) at 3.

VI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the Federal Register.

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Import Administration

16 SEPTEMBER 2017
Date