



C-570-052
Sunset Review
Public Document
E&C/OV: RG

February 27, 2023

MEMORANDUM TO: Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Hardwood Plywood Products from the People's Republic of China

I. SUMMARY

The U.S. Department of Commerce (Commerce) analyzed the substantive response of the domestic interested party¹ in the expedited first sunset review of the countervailing duty (CVD) order on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China).² We did not receive a substantive response from the Government of China (GOC) or from any other interested party. Accordingly, pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2), we conducted an expedited (120-day) sunset review of the *Order*. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received a substantive response:

- (1) Likelihood of Continuation or Recurrence of Countervailable Subsidies;
- (2) Net Countervailable Subsidy Rates that Are Likely to Prevail; and
- (3) Nature of the Subsidies

¹ The domestic interested party is the Coalition for Fair Trade in Hardwood Plywood (Coalition).

² See *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018) (*Order*).



II. BACKGROUND

On December 1, 2022, Commerce published the notice of initiation of the first sunset review of the *Order*, in accordance with section 751(c) of the Act.³ Commerce received a notice of intent to participate from the domestic interested party, *i.e.*, the Coalition, within the deadline specified in 19 CFR 351.218(d)(1)(i).⁴ The Coalition claimed interested party status under section 771(9)(F) of the Act, as an association of producers of the domestic like product in the United States.⁵

On January 3, 2023, Commerce received a substantive response from the Coalition within the deadline specified in 19 CFR 351.218(d)(3)(i).⁶ We did not receive a substantive response from any other interested parties in this proceeding, and no party requested a hearing.

On January 25, 2023, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from a respondent interested party.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP1-2016 (including any revisions to that standard).

For purposes of the *Order*, a “veneer” is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of the *Order* regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface

³ See *Initiation of Five-Year (Sunset) Reviews*, 87 FR 73757 (December 1, 2022).

⁴ See Coalition’s Letter, “Notice of Intent to Participate in Sunset Review,” dated December 13, 2022.

⁵ *Id.* at 2.

⁶ See Coalition’s Letter, “Substantive Response to the Notice of Initiation,” dated January 3, 2023 (Coalition’s Substantive Response).

⁷ See Commerce’s Letter, “Sunset Reviews Initiated on December 1, 2022,” dated January 25, 2023.

coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded, smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed, cut-to-size, notched, punched, drilled, or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of the *Order*, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the in-scope product.

The scope of the *Order* excludes the following items: (1) structural plywood (also known as “industrial plywood” or “industrial panels”) that is manufactured 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), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty (AD) and CVD orders on Multilayered Wood Flooring from the People’s Republic of China. *See Multilayered Wood Flooring from the People’s Republic of China*, 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and AD order), and *Multilayered Wood Flooring from the People’s Republic of China*, 76 FR 76693 (December 8, 2011) (CVD order), as amended by *Multilayered Wood Flooring from the People’s Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as “solid bamboo”); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an “Exterior” or “Exposure 1” bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of the *Order* are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the *Order* is “ready to assemble” (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of furniture, 2) all accessory parts (*e.g.*, screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and 3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a

space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of the *Order* are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the *Order* are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and 3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of the *Order* are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of the *Order* are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of the *Order* are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters, (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers, and (5) top layer machined with a curved edge and one or more profile channels throughout.

Excluded from the scope of the *Order* are certain door stiles and rails made of laminated veneer lumber that have a width not to exceed 50 millimeters, a thickness not to exceed 50 millimeters, and a length of less than 2,450 millimeters.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4155; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165;

4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.5700; 4412.33.0620; 4412.33.0640; 4412.33.0670; 4412.33.2630; 4412.33.3235; 4412.33.3255; 4412.33.3265; 4412.33.3275; 4412.33.3285; 4412.33.5700; 4412.34.2600; 4412.34.3235; 4412.34.3255; 4412.34.3265; 4412.34.3275; 4412.34.3285; 4412.34.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings: 4412.10.9000; 4412.94.5100; 4412.94.9500; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 9403.90.7005; 9403.90.7010; and 9403.90.7080. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

IV. HISTORY OF THE ORDER

On November 16, 2017, Commerce published its *Final Determination*, finding that countervailable subsidies are being provided to producers and exporters of hardwood plywood from China.⁸ On January 4, 2018, Commerce published the *Order*, which established the following net countervailable subsidy rates:

Table 1:

| Producer/Exporter | Subsidy Rate (percent <i>ad valorem</i>) |
|--|---|
| Shandong Dongfang Bayley Wood Co., Ltd (Bayley) ⁹ | 194.90 |
| Linyi Sanfortune Wood Co., Ltd | 22.98 |
| All Others | 22.98 |
| Non-cooperative Companies ¹⁰ | 194.90 |

As explained in the *Final Determination*,¹¹ Commerce found that the following programs provided countervailable subsidies to one or more of the mandatory respondents:

1. Policy Loans to the Hardwood Plywood Industry
2. Preferential Loans to State-Owned Enterprises (SOEs)

⁸ See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

⁹ Commerce found that Shandong Dongfang Bayley Wood Co., Ltd. is cross-owned with Linyi Yinhe Panel Factory, a producer of subject merchandise. Commerce also applied Shandong Dongfang Bayley Wood Co., Ltd.'s rate to Linyi Yinhe Panel Factory. See *Order*, 83 FR at 516.

¹⁰ In the investigation, 59 non-cooperative companies received a subsidy rate based on facts available with an adverse inference (AFA). See *Final Determination*, 82 FR at 53474.

¹¹ See *Final Determination* IDM at 8-9.

3. Provision of Electricity for Less than Adequate Remuneration (LTAR)
4. Provision of Land-Use Rights for LTAR
5. Provision of Urea for LTAR
6. Provision of Formaldehyde for LTAR
7. Enterprise Innovation Loan Interest Grant
8. Foreign Trade Regional Coordination Development Promotion Fund
9. Linyi Mart Development Special Fund
10. Forest Certification Pilot Special Fund

Commerce relied on AFA and found the above programs, as well as the following additional programs,¹² to provide countervailable subsidies to the non-cooperative companies, including Bayley:

1. Income Tax Reductions under Article 28 of the Enterprise Income Tax
2. Tax Offsets for Research and Development under the Enterprise Income Tax
3. Preferential Income Tax Policy for Enterprises in the Northeast Region
4. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
5. Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations
6. Local Income Tax Exemption and Reduction Programs for “Productive” Foreign Invested Enterprises
7. Tax Offsets for Research and Development by Foreign-Invested Enterprises
8. Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises
9. Provision of Standing Timber for LTAR
10. Provision of Cut Timber for LTAR
11. Provision of UF Resin for LTAR
12. Provision of Export Credits - Export Buyers’ Credit
13. Provision of Export Credits - Export Sellers’ Credit
14. Provision of Water for LTAR
15. Provision of Land to SOEs by the GOC for LTAR
16. Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
17. Interest Loan Subsidies for the Forestry Industry
18. Foreign Trade Development Fund Grants
19. Export Assistance Grants
20. Export Interest Subsidies
21. Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
22. Funds for Outward Expansion of Industries in Guangdong Province
23. Provincial Fund for Fiscal and Technological Innovation
24. State Key Technology Renovation Fund
25. Shandong Province’s Special Fund for the Establishment of Key Enterprise Technology Centers
26. Shandong Province’s Environmental Protection Industry Research and Development Fund
27. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
28. Waste Water Treatment Subsidies
29. Technology to Improve Trade Research and Development Fund

¹² *Id.* at 9-13.

30. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
31. Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
32. Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment
33. Export Performance Award
34. Special Municipal Encouragement Fund for Foreign Trade Development
35. 2009 Special Promotion Fund for Foreign Trade Steady Growth
36. Finance Contribution Award
37. Special Fund for Export Credit Insurance Premium
38. Patent Application Award
39. Enterprise Technical Transformation Fixed Assets Investment Award

Since the issuance of the *Order*, Commerce has completed one administrative review.¹³ A second administrative review was initiated and later rescinded.¹⁴

Commerce has conducted several scope and circumvention proceedings relating to the *Order*. On September 7, 2018, we issued a scope ruling in which we found that the following types of merchandise are covered by the *Order*: (1) hardwood plywood that has been cut-to-size, painted, laminated, stained, ultra violet light finished, grooved, and/or covered in paper, regardless of where such processing took place; (2) hardwood plywood that has been edge-banded; and (3) shipments of hardwood plywood that do not qualify for the ready-to-assemble kitchen cabinet exclusion.¹⁵ However, following litigation at the U.S. Court of International Trade (CIT), Commerce subsequently withdrew the scope ruling.¹⁶

On August 6, 2021, Commerce issued a final circumvention determination, as amended via litigation, finding that plywood with face and back veneers of radiata and/or agathis pine that (1) has a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label certifying that it is compliant with TSCA/CARB requirements, and (2) is made with a resin, the majority of which is comprised of one or more of the following three product types—urea formaldehyde, polyvinyl acetate, and/or soy—was not circumventing the *Order*.¹⁷

On January 21, 2022, Commerce issued a final scope ruling in response to a U.S. Customs and Border Protection covered merchandise referral.¹⁸ In the scope ruling, Commerce determined that hardwood plywood which was assembled in the Socialist Republic of Vietnam (Vietnam)

¹³ See *Certain Hardwood Plywood Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017-2018*, 85 FR 11050 (February 26, 2020).

¹⁴ See *Hardwood Plywood Products from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2019*, 85 FR 39883 (July 2, 2020).

¹⁵ See *Notice of Scope Rulings*, 84 FR 44848, 44849 (August 27, 2019).

¹⁶ See *Certain Hardwood Plywood Products from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision*, 86 FR 31277 (June 6, 2021).

¹⁷ See *Certain Hardwood Plywood Products from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Circumvention Determination and Notice of Amended Final Circumvention Determination Pursuant to Court Decision*, 86 FR 43187 (July 31, 2021); see also *Certain Hardwood Plywood Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 84 FR 65783 (November 29, 2019).

¹⁸ See *Notice of Scope Rulings*, 87 FR 31859 (May 25, 2022). This ruling has been appealed to the CIT, Consol. Ct. No. 22-00049.

using two-ply panels imported from China, was Chinese country of origin because the two-ply panels were not substantially transformed by the processing occurring in Vietnam.¹⁹

On July 29, 2022, Commerce issued a preliminary scope/circumvention determination, finding that hardwood plywood products which were assembled in Vietnam using hardwood plywood inputs sourced from China are products of China and are subject to the *Order* on hardwood plywood from China, and that hardwood plywood assembled in Vietnam using hardwood plywood inputs sourced from China are circumventing the *Order*.²⁰ The final determinations are pending.

Commerce conducted one changed circumstances review (CCR) in this proceeding and issued the final results on June 2, 2021.²¹ The CCR resulted in a partial revocation of the *Order* with respect to certain finished laminated veneer lumber door stiles and rails.²² We have not conducted a new shipper review of the *Order*.

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy determined in the investigation and any subsequent reviews; and (2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy rate likely to prevail if the *Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with information concerning the nature of the subsidies and whether they are subsidies as described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement).

¹⁹ *Id.*

²⁰ See *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Scope Determination and Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 87 FR 45753 (July 29, 2022).

²¹ See *Certain Hardwood Plywood Products from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders in Part*, 86 FR 29562 (June 2, 2021).

²² *Id.*

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the interested parties.

1) Likelihood of Continuation or Recurrence of Countervailable Subsidies

*Domestic Interested Party Comments*²³

Revocation of the *Order* would lead to a continuation or recurrence of subsidization of hardwood plywood from China because there is no evidence that the programs giving rise to the net countervailable subsidy rates have changed or been terminated. In the first administrative review, Commerce again found subsidization based on the same programs that were present in the underlying investigation. Import data indicate that the *Order* has had a direct effect on Chinese producers, as import volumes of hardwood plywood from China decreased substantially after the *Order* went into effect.

Commerce's Position: In determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy rate determined in the investigation and subsequent reviews and whether there have been any changes in a program found to be countervailable that are likely to affect that net countervailable subsidy rate. According to the SAA,²⁴ Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.²⁵ The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.²⁶ The continued existence of programs that have not been used, but have not been terminated without residual benefits or replaced, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.²⁷ Where a subsidy program is found to exist, Commerce normally will determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.²⁸

Consistent with prior determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.²⁹ To determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the

²³ See Coalition's Substantive Response at 9-15.

²⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

²⁵ *Id.*

²⁶ *Id.*

²⁷ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying IDM at Comment 1.

²⁸ *Id.*

²⁹ See *Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62839 (December 6, 2019), and accompanying IDM at 11; see also *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006), and accompanying Preliminary Decision Memorandum at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

program.³⁰ Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.³¹ Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence and was not granted as part of a broader, government program.³²

Based on the facts on the record, and because no party has submitted evidence to demonstrate that the above-referenced countervailable programs have expired or been terminated without any residual benefits, Commerce determines that the subsidy programs found to be countervailable during the investigation and first administrative review continue to exist.

Because the continuation of programs is highly probative of the likelihood of the continuation or recurrence of countervailable subsidies, we determine that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies for hardwood plywood from China.

2) Net Countervailable Subsidy Rates that Are Likely to Prevail

*Domestic Interested Party Comments*³³

The countervailable subsidy rates determined in the investigation are the only calculated rates that reflect the behavior of Chinese exporters without the discipline of an order in place and, thus, these rates are probative of the behavior of exporters and the GOC if the *Order* were revoked. Therefore, Commerce should find that the countervailable subsidy rates that are likely to prevail if the *Order* were revoked are the rates assigned in the investigation, and Commerce should report those rates to the ITC.

Commerce's Position: Consistent with the SAA and legislative history, Commerce normally will provide to the ITC the net countervailable subsidy rates that were determined in the investigation, as these are the rates likely to prevail if the order in question is revoked because these are the only calculated rates that reflect the behavior of exporters and foreign governments without the discipline of the order in place.³⁴ Section 752(b)(1)(B) of the Act provides, however, that Commerce also will consider “whether any change in the program which gave rise to the net countervailable subsidy” determination in the investigation has occurred that is likely to affect the net countervailable subsidy rate. Therefore, although the SAA provides that Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if the rate was derived from countervailable subsidy programs found in subsequent reviews to be terminated, there has been a program-wide change, or the rate does not include a program or programs found to be countervailable in subsequent reviews.³⁵

³⁰ See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011), and accompanying IDM at Comment 1.

³¹ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001), and accompanying IDM at Comment 7.

³² See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011), and accompanying IDM at Comment 1.

³³ See Coalition's Substantive Response at 15.

³⁴ See SAA at 890; see also H.R. Rep. No. 103-826 (1994) at 64.

³⁵ See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010), and accompanying IDM at Comment 2.

Because the rates determined in the only administrative review were based on the same set of programs countervailed in the underlying investigation, and because no party has submitted information indicating that any program from the investigation has been terminated, Commerce is providing the ITC with the rates found in the original investigation. Consistent with section 752(b)(3) of the Act, Commerce will provide to the ITC the net countervailable subsidy rates shown below (in the section entitled “Final Results of Review”) as the net countervailable subsidy rates that are likely to prevail if the *Order* were revoked.

3) Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidy programs, and whether these programs constitute subsidies that fall within the meaning of Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired effective January 1, 2000.

Article 3 Subsidies

The following programs fall within the definition of a subsidy under Article 3.1 of the SCM Agreement, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

- Foreign Trade Regional Coordination Development Promotion Fund
- Linyi Mart Development Special Fund
- Forest Certification Pilot Special Fund
- Provision of Export Credits - Export Buyers' Credit
- Provision of Export Credits - Export Sellers' Credit
- Foreign Trade Development Fund Grants
- Export Assistance Grants
- Export Interest Subsidies
- Funds for Outward Expansion of Industries in Guangdong Province
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- Technology to Improve Trade Research and Development Fund
- Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
- Export Performance Award
- Special Fund for Export Credit Insurance Premium
- Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises
- Special Municipal Encouragement Fund for Foreign Trade Development
- 2009 Special Promotion Fund for Foreign Trade Steady Growth
- Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands

Article 6.1 Subsidies

The following subsidy programs do not fall within the meaning of Article 3 of the SCM Agreement, but may be subsidies as described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. The subsidies may also fall within the meaning of Article 6.1 if they constitute debt forgiveness, are grants to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. There is insufficient information on the record to determine whether the following subsidy programs fall within the meaning of Article 6.1. We are, in any case, providing the ITC with the following list of programs:

- Preferential Loans to SOEs
- Provision of Electricity for LTAR
- Provision of Urea for LTAR
- Provision of Formaldehyde for LTAR
- Enterprise Innovation Loan Interest Grant
- Income Tax Reductions under Article 28 of the Enterprise Income Tax
- Tax Offsets for Research and Development under the Enterprise Income Tax
- Preferential Income Tax Policy for Enterprises in the Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations
- Local Income Tax Exemption and Reduction Programs for “Productive” Foreign Invested Enterprises
- Tax Offsets for Research and Development by Foreign-Invested Enterprises
- Policy Loans to the Hardwood Plywood Industry³⁶
- Provision of Land-Use Rights for LTAR
- Provision of Standing Timber for LTAR
- Provision of Cut Timber for LTAR
- Provision of UF Resin for LTAR
- Provision of Water for LTAR
- Provision of Land to SOEs by the GOC for LTAR
- Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- Interest Loan Subsidies for the Forestry Industry
- Provincial Fund for Fiscal and Technological Innovation
- State Key Technology Renovation Fund
- Shandong Province’s Special Fund for the Establishment of Key Enterprise Technology Centers
- Shandong Province’s Environmental Protection Industry Research and Development Fund
- Waste Water Treatment Subsidies
- Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
- Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment
- Finance Contribution Award
- Patent Application Award
- Enterprise Technical Transformation Fixed Assets Investment Award

³⁶ In the underlying investigation, Commerce treated a subset of such funds as export contingent.

VII. FINAL RESULTS OF SUNSET REVIEW

As a result of this sunset review, Commerce finds that revocation of the *Order* would likely lead to a continuation or recurrence of countervailable subsidies at the rates listed in Table 1, above.

VIII. RECOMMENDATION

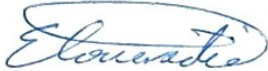
Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of our findings.

Agree

Disagree

2/27/2023

X



Signed by: ABDELALI ELOUARADIA
Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance