

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-570-971]

**Multilayered Wood Flooring From the People's Republic of China: Initiation of Countervailing Duty Investigation**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* November 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Yasmin Nair and Joshua Morris, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3813 and (202) 482-1779, respectively.

**SUPPLEMENTARY INFORMATION:****The Petition**

On October 21, 2010, the Department of Commerce ("Department") received a petition filed in proper form by the Coalition for American Hardwood Parity ("Petitioner"), whose members (Anderson Hardwood Floors, LLC; Award Hardwood Floors; Baker's Creek Wood Floors, Inc.; From the Forest; Howell Hardwood Flooring; Mannington Mills, Inc.; Nydree Flooring; Shaw Industries Group, Inc.) are domestic producers of multilayered wood flooring.<sup>1</sup> In response to the Department's requests, Petitioner provided timely information supplementing the Petition on October 29, 2010, November 2, 2010, and November 3, 2010. Petitioner also provided information supplementing the Petition on November 9, 2010.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended ("the Act"), Petitioner alleges that manufacturers, producers, or importers of multilayered wood flooring from the People's Republic of China ("PRC") received countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing multilayered wood flooring in the United States.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C), (E), and (F) of the Act, and

Petitioner has demonstrated sufficient industry support with respect to the countervailing duty ("CVD") investigation (see "Determination of Industry Support for the Petition" section below).

On November 4, 2010, we received comments from Lumber Liquidators Services, LLC ("Lumber Liquidators") and Home Legend, LLC ("Home Legend"), U.S. importers of multilayered wood flooring (collectively, "importers"). Lumber Liquidators and Home Legend are interested parties as defined by section 771(9)(A) of the Act. The importers and U.S. Floors LLC ("US Floors") filed additional comments on November 9, 2010.

**Period of Investigation**

The period of investigation is January 1, 2009, through December 31, 2009.

**Scope of Investigation**

The products covered by the investigation are multilayered wood flooring products from the PRC. For a full description of the scope of the investigation, please see "Scope of the Investigation," in Appendix I of this notice.

**Comments on Scope of Investigation**

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As a result, the "Scope of Investigation" language has been modified from the language in the Petition to reflect these clarifications. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by November 30, 2010, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of the scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

**Consultations**

Pursuant to section 702(b)(4)(A)(ii) of the Act, on October 22, 2010, the Department invited representatives of

<sup>1</sup> See Petition for the Imposition of Antidumping and Countervailing Duties: Multilayered Wood Flooring from the People's Republic of China, dated October 21, 2010 ("Petition").

the Government of the PRC (“GOC”) for consultations with respect to the CVD petition. On October 27, 2010, the GOC’s Ministry of Commerce, under the Bureau of Fair Trade for Imports & Exports, requested consultations. These consultations were held by telephone on November 1, 2010. *See* Memorandum from Joshua Morris to the File, entitled, “Consultations with Officials from the Government of the People’s Republic of China on the Countervailing Duty Petition regarding Multilayered Wood Flooring,” (November 8, 2010), which is on file in the Central Records Unit (“CRU”) of the main Department of Commerce building, Room 7046. On November 9, 2010, Deputy Assistant Secretary for Import Administration Ronald Lorentzen met with representatives from the GOC to discuss the Petition. *See* Memorandum from Joshua Morris to the File, entitled, “Meeting with Officials from the Embassy of the People’s Republic of China on the Countervailing Duty Petition regarding Multilayered Wood Flooring,” (November 10, 2010) which is on file in the CRU.

#### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether

“the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

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).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that multilayered wood flooring constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* “Countervailing Duty Investigation Initiation Checklist: Multilayered Wood Flooring from the People’s Republic of China” (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering Multilayered Wood Flooring from the People’s Republic of China, on file in the CRU.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of Investigation” section above. To establish industry support, Petitioner provided its production volume of the domestic like product in 2009, and compared this to the estimated total production volume of the domestic like product for the entire domestic industry. *See* Volume I of the Petitions,

at 4–5, and Exhibit I–3; *see also* Supplement to the AD/CVD Petitions dated November 2, 2010 at 2; *see also* Supplement to the AD/CVD Petitions dated November 3, 2010 at 1–2 and Exhibit I–K. Petitioner estimated 2009 production volume of the domestic like product by non-petitioning companies based on its knowledge of the industry. We have relied upon data Petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

On November 4, 2010, we received a submission on behalf of importers of multilayered wood flooring, interested parties to this proceeding as defined in section 771(9)(A) of the Act, questioning the industry support calculation. *See* Initiation Checklist at Attachment II. On November 8 and 9, 2010, Petitioner filed replies to the importers’ industry support challenge. The importers filed an additional submission on November 9, 2010, on behalf of the importers and US Floors, in which they voice US Floors’ opposition to the Petitions. For further discussion of these submissions, *see* Initiation Checklist at Attachment II.

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Because the Petition and supplemental submissions did not establish support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department was required to take further action in order to evaluate industry support. *See* section 702(c)(4)(D) of the Act. In this case, the Department was able to rely on other information, in accordance with section 702(c)(4)(D)(i) of the Act, to determine industry support. *See* Initiation Checklist at Attachment II. Based on information provided in the Petition, other submissions, and additional information obtained by the Department, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to,

the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C), (E), and (F) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate. *Id.*

### Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of multilayered wood flooring from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing multilayered wood flooring. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry’s injured condition is illustrated by reduced market share, reduced production, reduced shipments, reduced capacity and capacity utilization, underselling and price depression or suppression, reduced employment, hours worked, and wages paid, decline in financial performance, lost sales and revenue, and increase in import penetration. *See* Volume I of the Petition, at 16–60. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III, Injury.

### Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an

imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioner(s) supporting the allegations. The Department has examined the CVD petition on multilayered wood flooring from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of multilayered wood flooring in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

#### A. Tax Benefit Programs

1. Income Tax Exemption/Reduction under “Two-Free/Three Half” Program.
2. Local Income Tax Exemption and Reductions for “Productive” Foreign-Invested Enterprises (“FIEs”).
3. Tax Subsidies to FIEs Based on Geographic Location.

#### B. Indirect Tax and Import Tariff Programs

4. Value Added Tax and Tariff Exemptions on Imported Equipment.

#### C. Provision of Goods or Services for Less Than Adequate Remuneration (“LTAR”)

5. Electricity for LTAR.
  6. Provision of Electricity at LTAR for FIEs and “Technologically Advanced” Enterprises by Jiangsu Province.
- For further information explaining why the Department is investigating these programs, *see* Initiation Checklist.

We are not including in our investigation the following program alleged to benefit producers and exporters of the subject merchandise in the PRC:

#### 1. Currency Undervaluation

Petitioner alleges that the GOC ensures that the Renminbi (“RMB”) exchange rate significantly understates the value of the RMB against the U.S. Dollar (“USD”) from 25 to 50 percent. Petitioner alleges that Chinese exporters earning USD through export transactions receive an artificially inflated amount of RMB when they exchange the USD at the People’s Bank of China, a Chinese government entity. Petitioner states that the GOC thus

ensures exporters who receive USD from export activities receive more RMB than they otherwise would if the value of the RMB was set through market mechanisms. Petitioner alleges that the GOC’s program to maintain artificial exchange rates qualifies as a financial contribution or, in the alternative, Petitioner alleges that GOC foreign exchange market interventions constitute a price support within the meaning of Article XVI of the GATT 1994. In both cases, Petitioner describes the benefit conferred as the excess of RMB received over what would have been received at a market rate (“excess RMB”), and alleges specificity within the meaning of section 771(5A)(B) of the Act. Petitioner notes that the U.S. House of Representatives has recently passed legislation in regard to subsidies relating to a fundamentally undervalued currency. According to Petitioner, this legislation states that a subsidy may be considered export contingent, even if the subsidy is also provided in non-export circumstances.

Section 771(5A)(B) of the Act describes an export subsidy as “\* \* \* a subsidy that is, in law or fact, contingent upon export performance, alone or as 1 of 2 or more conditions.” Petitioner has failed to sufficiently allege that the receipt of the excess RMB is contingent on export or export performance because receipt of the excess RMB is independent of the type of transaction or commercial activity for which the dollars are converted or of the particular company or individuals converting the dollars. Petitioner’s reliance on legislation passed by the U.S. House of Representatives is premature as the proposed language does not yet equate to an enforceable statute. Consequently, consistent with previous cases, we do not plan on investigating this program because Petitioner has failed to properly allege the specificity element.<sup>2</sup>

#### Respondent Selection:

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the period of investigation. We intend to release the CBP data under Administrative Protective Order (“APO”) to all parties with access to information protected by APO within five days of the announcement of the

<sup>2</sup> *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010); *see also Aluminum Extrusions From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010).

initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://ia.ita.doc.gov/apo>.

**Distribution of Copies of the Petition:**  
In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petition has been provided to the GOC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

**ITC Notification:**

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC:**

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized multilayered wood flooring from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

November 10, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**APPENDIX I**

**Scope of the Investigation**

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)<sup>3</sup> in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, e.g., "engineered wood flooring" or "plywood flooring." Regardless of the particular terminology, all products that meet the description set forth herein are intended

for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade.

Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes.) The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard (MDF), high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of high-density fiberboard, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS):  
4412.31.0520; 4412.31.0540; 4412.31.0560;  
4412.31.2510; 4412.31.2520; 4412.31.4040;  
4412.31.4050; 4412.31.4060; 4412.31.4070;  
4412.31.5125; 4412.31.5135; 4412.31.5155;  
4412.31.5165; 4412.31.3175; 4412.31.6000;  
4412.31.9100; 4412.32.0520; 4412.32.0540;  
4412.32.0560; 4412.32.2510; 4412.32.2520;  
4412.32.3125; 4412.32.3135; 4412.32.3155;  
4412.32.3165; 4412.32.3175; 4412.32.3185;

4412.32.5600; 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; 4412.94.3131;  
4412.94.3141; 4412.94.3160; 4412.94.3171;  
4412.94.4100; 4412.94.5100; 4412.94.6000;  
4412.94.7000; 4412.94.8000; 4412.94.9000;  
4412.94.9500; 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; 4412.99.5100; 4412.99.5710;  
4412.99.6000; 4412.99.7000; 4412.99.8000;  
4412.99.9000; 4412.99.9500; 4418.71.2000;  
4418.71.9000; 4418.72.2000; and  
4418.72.9500.

In addition, imports of subject merchandise may enter the U.S. under the following HTSUS subheadings:  
4409.10.0500; 4409.10.2000; 4409.29.0515;  
4409.29.0525; 4409.29.0535; 4409.29.0545;  
4409.29.0555; 4409.29.0565; 4409.29.2530;  
4409.29.2550; 4409.29.2560; 4418.71.1000;  
4418.79.0000; and 4418.90.4605.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2010-29117 Filed 11-17-10; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>3</sup> A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.