

DATE: April 3, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Rescission of the
New Shipper Review of Wooden Bedroom Furniture from the
People’s Republic of China for Marvin Furniture (Shanghai) Co.,
Ltd.

SUMMARY

The Department of Commerce (the “Department”) analyzed the case briefs and rebuttal briefs submitted by Marvin Furniture (Shanghai) Co., Ltd. (“Marvin Furniture”) and the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Basset Furniture Company, Inc. (collectively, “Petitioners”), respectively, in the above-referenced review. As a result of our analysis, we recommend adopting the preliminary rescission of Marvin Furniture’s new shipper review for the final results. We recommend that you approve the position described in the “Discussion of the Issue” section of this memorandum.

Background

On January 9, 2012, the Department published in the Federal Register the preliminary rescission of the new shipper review of wooden bedroom furniture (“WBF”) from the People’s Republic of China (“PRC”) for Marvin Furniture.¹ We invited parties to comment on our Preliminary Rescission. On February 9, 2012, Marvin Furniture submitted case briefs and requested a closed hearing regarding the Department’s decision to preliminarily rescind its new shipper review (“NSR”). On February 16, 2012, the Department rejected Marvin Furniture’s case brief due to the inclusion of untimely new factual information. On February 16, 2012, Marvin Furniture resubmitted its case brief with the new factual information excluded. On February 17, 2012, Petitioners filed rebuttal briefs. On March 7, 2012 the Department held a closed hearing.

¹ See Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review, 77 FR 1456 (January 10, 2012) (“Preliminary Rescission”).

DISCUSSION OF THE ISSUE:

Comment 1: Whether to rescind the NSR for Marvin Furniture

Marvin Furniture's Arguments:

- Its failure to report a certain entry of subject merchandise prior to the period of review ("POR") in its request for an NSR is a harmless error because the items in the entry were never sold, could not be included in an antidumping margin calculation, and would have no effect on the outcome of the review.
- It is entitled to the NSR because, at the time of initiation, it met the statutory requirements for receiving an NSR. The Department cannot rescind the review on technicalities that do not substantively impact the new shipper's eligibility.
- Even if it had reported its pre-POR entry, it would have qualified for the NSR because it filed its NSR request within one year of its pre-POR entry of subject merchandise into the United States. The prerequisite of identifying the date of first entry or shipment is not an independent condition for obtaining an NSR.
- It had no knowledge prior to initiation that the pre-POR entry of subject merchandise was an entry for consumption. The shipment was coordinated by its parent company, Boori International Pty. Limited ("Boori International").
- Even though it did not report the pre-POR entry in its NSR request, it has now thoroughly documented the entry on the record and corrected any errors in its request.
- The Department knew of Marvin Furniture's pre-POR entry at the time it initiated the review and determined that it met the threshold requirements for initiation. Had the Department acted on its knowledge of the pre-POR entry within a reasonable time, Marvin Furniture could have amended its review request to include the entry.

Petitioners' Arguments:

- The Department correctly rescinded the NSR because the information that formed the predicate for initiating the review proved to be inaccurate. Marvin Furniture certified that its POR shipment of WBF was its first to the United States but U.S. Customs and Border Protection ("CBP") data showed that Marvin Furniture had exported WBF from the PRC to the United States prior to the POR.
- Marvin Furniture knew, or should have known, about the pre-POR shipments. After initiation Marvin Furniture provided the Department with invoices that demonstrated that it had shipped subject merchandise to the United States prior to the POR.

Department's Position:

We disagree with Marvin Furniture. Section 351.214(b)(2)(iv) of the Department's regulations require a request for an NSR to contain, among other things, documentation establishing "the date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States." Thus, the regulations specifically state that an NSR request *must* contain documentation establishing the date on which subject merchandise

of the exporter or producer was first entered into the United States for consumption.² Marvin Furniture did not identify, or provide documentation for, the first entry of its subject merchandise into the United States.

Marvin Furniture's failure to report its pre-POR entry in its NSR request is not a harmless error. Marvin Furniture did not meet the requirements for initiating an NSR by the due date for requesting such a review, and yet it was granted the privilege of posting a bond on its entries and Marvin Furniture has had this privilege for seven months. Further, NSRs are conducted on an expedited basis. Providing accurate information and the required documentation by the deadline for requesting an NSR are not irrelevant technicalities but are important procedural requirements. Waiving any of these requirements, as Marvin Furniture suggests, and allowing parties to submit the required information to show they qualify as a new shipper after the deadline for doing so would render the NSR regulations meaningless.

Even though Marvin Furniture claims that the first entry of its subject merchandise was never sold and thus not identifying it in its review request would have no effect on the outcome of the review, the fact remains that the Department initiated this NSR based on erroneous information. Marvin Furniture did not properly identify this entry in its NSR request. An NSR request must meet all requirements by the filing deadline and contain the correct information so that the Department can determine whether it is appropriate to conduct an NSR. It is important to strictly enforce the regulations for NSRs because initiation makes a difference at the border. As mentioned above, new shippers receive a bonding privilege.

Even though Marvin Furniture's request for an NSR was within one year of the pre-POR entry of subject merchandise into the United States, Marvin Furniture inaccurately certified that its entries during the POR, for which it was requesting the NSR, were its first entries into the United States. It has been the Department's practice to rescind NSRs after initiation when it determines that the review request was deficient or that it did not contain accurate information.³

Although Marvin Furniture claims it had no knowledge of the pre-POR entry for consumption prior to initiation, and notes that its parent, Boori International, coordinated the shipment of the subject merchandise,⁴ company officials of Boori International and Boori International's affiliated U.S. reseller, some of whom are officials at Marvin Furniture, certified certain statements on behalf of Marvin Furniture in the instant review request. Despite the involvement of the Boori International officials with the request for review, the pre-POR entry of subject merchandise was never disclosed prior to initiation. Further, even though Marvin Furniture claims that there was an understanding that the pre-POR entry of subject merchandise was not to

² See 19 CFR 351.214(b)(2)(iv) (emphasis added).

³ See, e.g., Fresh Garlic from the People's Republic of China: Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co., Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc., 76 FR 52315 (August 22, 2011); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 76 FR 43262 (July 21, 2011); Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping New Shipper Review, 69 FR 64029 (November 3, 2004); and Silicon Metal from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 67 FR 38255 (June 3, 2002).

⁴ See Marvin Furniture (Shanghai) Co. Ltd. and Boori USA Inc.: Response to Supplemental Questionnaire, dated August 26, 2011, at page 2.

be entered for consumption,⁵ Marvin Furniture never provided documentation supporting this claim despite numerous requests from the Department to do so.⁶ Thus the record does not support Marvin Furniture's claims.

The Department did not know at the time that it initiated the instant review that Marvin Furniture's pre-POR entry was an entry of subject merchandise. We relied on Marvin Furniture's statements in its review request⁷ and subsequent statements prior to initiation to determine its eligibility for an NSR. Before the Department initiated the NSR, Marvin Furniture stated that the pre-POR entry consisted of non-subject merchandise samples.⁸ Relying on this statement, the Department initiated the NSR. However, after the Department initiated the instant review, Marvin Furniture reported that the pre-POR entry contained subject merchandise. Thus, Marvin Furniture did not provide all of the appropriate information in its review request. Contrary to Marvin Furniture's claim that had the Department acted on its knowledge of the pre-POR entry within a reasonable time, Marvin Furniture could have amended its review request to include the entry, it could not have amended its request to note the pre-POR entry in a timely fashion because it chose to submit the review request on the last day for requesting an NSR. In accordance with 19 CFR 351.214(d), the Department is required to initiate the NSR within a month immediately following the semi-annual anniversary month or the anniversary month depending on the date of the request. Accordingly, the Department must have all required supporting documents on the record by the deadline for requesting a review in order to initiate an NSR in a timely manner.⁹

Marvin Furniture had an obligation to document the first entry in its NSR request, regardless of its claim that the documentation is immaterial. Because Marvin Furniture's review request did not properly identify the first entry of its subject merchandise into the United States, it is appropriate to rescind the NSR for the Final Results. To do otherwise the Department would have to ignore the limits and requirements set by the regulations.

⁵ See Marvin Furniture (Shanghai) Co. Ltd. and Boori USA Inc.: Response to Supplemental Questionnaire, dated August 26, 2011, at page 4.

⁶ Because the nature of this information is proprietary, see Memorandum to the File from Patrick O'Connor through Howard Smith regarding: "Business Proprietary Information Regarding the Final Rescission of Marvin Furniture (Shanghai) Co., Ltd.," dated concurrently with this memorandum.

⁷ See Marvin Furniture (Shanghai) Co., Ltd. and Boori USA Inc.: Request for Initiation of Antidumping New Shipper Review: Wooden Bedroom Furniture from the People's Republic of China, dated July 30, 2011.

⁸ See Marvin Furniture (Shanghai) Co., Ltd.: CBP Data Comments, dated August 24, 2011 at page 2.

⁹ See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews, 72 FR 15653, (April 2, 2007).

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final rescission of review in the Federal Register.

Agree _____ Disagree _____

Paul Piquado
Assistant Secretary
for Import Administration

Date