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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-109]

Ceramic Tile from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Negative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of ceramic tile from the People's Republic of China (China).

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, Moses Song, or John McGowan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3813, (202) 482-7885, or (202) 482-3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2019, Commerce published the *Preliminary Determination* of this investigation.¹ The petitioner is The Coalition for Fair Trade in Ceramic Tile. The mandatory respondents in this investigation are Temgoo International Trading Limited (Temgoo) and Foshan Sanfi Import & Export Co., Ltd. (Foshan Sanfi). In the *Preliminary Determination*,

¹ See *Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty Investigation, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 48125 (September 12, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

Commerce aligned the final determination in this countervailing duty (CVD) investigation with the final determination in the companion less-than-fair-value (LTFV) investigation, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4).

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation (POI) is from January 1, 2018 through December 31, 2018.

Scope of the Investigation

The product covered by this investigation covers ceramic tile from China. For a complete description of the scope of this investigation, *see* Appendix I.

² See Memorandum, "Issues and Decision for the Final Determination in the Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China," dated concurrently, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope Comments

During the course of this investigation and the concurrent LTFV investigation of ceramic tile from China, Commerce received scope comments from interested parties. On September 6, 2019, Commerce issued a Preliminary Scope Decision Memorandum.³ Several interested parties submitted case and rebuttal briefs concerning the scope of this investigation. For a summary of the product coverage comments and rebuttal comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.⁴ Based on the comments received, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination*. The scope in Appendix I remains unchanged from that which appeared in the *Preliminary Determination*.

Analysis of Subsidy Programs and Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation, other than those issues related to scope, are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum, is attached at Appendix II.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to

³ *See* Memorandum, “Ceramic Tile from the People’s Republic of China Decision Memorandum for the Preliminary Determinations,” dated September 6, 2019 (Preliminary Scope Decision Memorandum).

⁴ *See* Memorandum, “Ceramic Tile from the People’s Republic of China: Scope Decision Memorandum for the Final Determinations, dated concurrently with this notice (Final Scope Decision Memorandum).

the recipient, and that the subsidy is specific.⁵ Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁶ For description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Adverse Facts Available (AFA)

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Determination*. For this final determination, we are basing the CVD rates for Temgoo and Foshan Sanfi on facts otherwise available, with an adverse inference, pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of AFA, *see* the Issues and Decision Memorandum.

Final Negative Determination of Critical Circumstances

In the *Preliminary Determination*, Commerce determined, pursuant to section 703(e)(1) of the Act, that information provided in the critical circumstances allegation does not demonstrate the existence of critical circumstances with respect to imports of ceramic tile from China. For this final determination, we continue to find that critical circumstances do not exist with respect to imports of ceramic tile from China. For a full description of the methodology and results of Commerce's analysis, *see* the Issues and Decision Memorandum.

⁵ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁶ *See* Memorandum, "Ceramic Tile from the People's Republic of China Decision Memorandum for the Final Determination, dated concurrently with this notice (Final Scope Decision Memorandum).

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties, we made certain changes to the respondents' subsidy rate calculations set forth in the *Preliminary Determination*. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, Commerce shall determine an estimated all-others rate for companies not individually examined. Generally, under section 705(c)(5)(A)(i) of the Act, this rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely on AFA under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act provides that, where all countervailable subsidy rates established for the mandatory respondents are zero, *de minimis*, or based entirely on facts available, Commerce may use "any reasonable method" for assigning an all-others rate, including "averaging the estimated average countervailable subsidy rates determined for the exporters and producers individually investigated." In this investigation, all rates for the individually investigated respondents are based entirely on facts available, pursuant to section 776 of the Act. We are relying on a simple average of the total AFA rates assigned to Temgoo and Foshan Sanfi as the all-others rate in this final determination, consistent with the statutory provision to rely on "any reasonable method."

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we established individual estimated countervailable subsidy rates, as follows:

Company	Subsidy Rate
Temgoo International Trading Limited	358.81 percent
Sanfi Imp & Exp Co., Ltd. ⁷	358.81 percent
All Others	358.81 percent

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from China that were entered or withdrawn from warehouse, for consumption, on or after September 17, 2019, the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after January 10, 2020, but continue the suspension of liquidation of all entries from September 17 through January 9, 2020.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

⁷ Commerce assigned Sanfi's rate to each of the entities for which Sanfi provided an initial questionnaire response: Guangdong Sanfi Ceramics Group Co., Ltd.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice, in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of ceramic tile from China. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of ceramic tile from China, or sales (or the likelihood of sales) for importation of ceramic tile from China. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.⁸

Dated: March 30, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

⁸ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020).

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile “slabs” or “panels” (tiles that are larger than 1 meter² (11 ft.²)).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Critical Circumstances
- VI. Subsidies Valuation
- VII. Benchmarks and Interest Rates
- VIII. Use of Facts Otherwise Available and Adverse Inferences
- IX. Discussion of Issues
 - Comment 1: Application of AFA to Sanfi and Temgoo and Calculation of the All-Others Rate
 - Comment 2: Whether Commerce's Calculation of the AFA Rate is Unreasonable
 - Comment 3: Selection of AFA Rates for Subsidy Programs
 - Comment 4: Preliminary Scope Determination
- X. Recommendation

[FR Doc. 2020-07189 Filed: 4/6/2020 8:45 am; Publication Date: 4/7/2020]