



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-970]

### **Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony with the Results of 2015-2016 Antidumping Duty Administrative Review; Notice of Amended Final Results**

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

**SUMMARY:** On June 9, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. v. United States*, Court no. 18-00191, sustaining the Department of Commerce (Commerce)'s second remand results pertaining to the administrative review of the antidumping duty (AD) order on multilayered wood flooring (MLWF) from the People's Republic of China (China) covering the period December 1, 2015, through November 30, 2016. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. (Jilin Forest).

**DATES:** Applicable June 19, 2023.

**FOR FURTHER INFORMATION CONTACT:** Alexis Cherry, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0607.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 26, 2018, Commerce published its *Final Results* in the 2015-2016 AD administrative review of MLWF from China.<sup>1</sup> Commerce determined that mandatory respondent Jilin Forest did not qualify for a separate rate because it is an entity that is majority-owned by the Chinese government and, therefore, had not demonstrated an absence of *de facto* government control. Jilin Forest appealed Commerce's *Final Results*. On April 29, 2021, the CIT remanded the *Final Results* to Commerce.<sup>2</sup> The CIT held the following: (1) Commerce's determination of *de facto* government control of Jilin Forest, a cooperating mandatory respondent, lacks the support of substantial evidence and is not in accordance with law; and (2) Commerce failed to explain how the application of its non-market-economy (NME) presumption to Jilin Forest after the company was selected for individual examination was in accordance with law and supported by substantial evidence.<sup>3</sup>

In its first remand redetermination, issued in November 2021, Commerce further explained its determination that Jilin Forest failed to rebut the presumption of *de facto* government control and, therefore, was not entitled to an individual weighted-average dumping margin separate from the rate established for the China-wide entity.<sup>4</sup> Additionally, Commerce provided an overview of its broad authority under the statutory scheme, the purpose of Commerce's NME presumption,<sup>5</sup> and the application of its NME presumption and the application of the weighted-average dumping margin established for the China-wide entity to

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<sup>1</sup> See *Multilayered Wood flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015–2016*, 83 FR 35461 (July 26, 2018), and accompanying Issues and Decision Memorandum; and *Multilayered Wood Flooring from the People's Republic of China: Correction to the Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 45418 (September 7, 2018) (in which Commerce corrected the misspelling of Dalian Guhua Wooden Product Co., Ltd.'s name and included Double F Limited among the companies for which this review was rescinded) (collectively, *Final Results*). Commerce referred to the respondent Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. as "Jinqiao Flooring" in the *Final Results*.

<sup>2</sup> See *Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. v. United States*, 519 F. Supp. 3d 1224 (CIT 2021).

<sup>3</sup> *Id.*

<sup>4</sup> See *Final Results of Redetermination Pursuant to Court Remand, Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. v. United States*, Court No. 18-00191, Slip Op. 21-49 (CIT April 29, 2021), dated November 15, 2021, at 4-13, 37-42, available at <https://access.trade.gov/Resources/remands/21-49.pdf>.

<sup>5</sup> *Id.* at 15-22.

Jilin Forest.<sup>6</sup> We also referenced the U.S. Court of Appeals for the Federal Circuit’s (Federal Circuit’s) decisions that have affirmed Commerce’s application of the NME presumption and recognition of an NME-wide entity as a single exporter for purposes of assigning an antidumping duty rate to the individual members of the NME-wide entity that have not demonstrated either their *de jure* or *de facto* independence from government control.<sup>7</sup>

The CIT remanded for a second time, finding that Commerce did not provide a “lawful justification for its use of the NME presumption with respect to Jilin {Forest} as a cooperative mandatory respondent” and ordered Commerce to calculate an individual weighted-average dumping margin for Jilin Forest.<sup>8</sup> The CIT also held Commerce’s reliance on the China NME Status report for the basis that labor unions in China are under state control is substantial evidence “to support Commerce’s conclusion that Jilin has not rebutted the presumption of state control {} because if Jilin’s labor union is under state control, its appointment of a majority of Jilin’s board of directors confirms that the state controls the company.”<sup>9</sup>

In its second remand redetermination, issued in May 2023, Commerce calculated a weighted-average dumping margin for Jilin Forest, under respectful protest, in accordance with the methodology set out in the *Preliminary Results*.<sup>10</sup> The CIT sustained Commerce’s second remand redetermination.<sup>11</sup>

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<sup>6</sup> *Id.* at 25-28.

<sup>7</sup> *Id.* at 19-21.

<sup>8</sup> See *Jilin Forest Industry Jinqiao Flooring Group Co. Ltd. v. United States*, 617 F. Supp.3d 1343, 1369 (CIT 2023).

<sup>9</sup> *Id.* at 1350.

<sup>10</sup> See *Final Results of Redetermination Pursuant to Court Remand, Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. v. United States*, Court No. 18-00191, Slip Op. 23-14 (CIT February 9, 2023), dated May 3, 2023, at 4-13, 37-42. See also *Multilayered Wood Flooring from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015-2016*, 83 FR 2137 (January 16, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>11</sup> See *Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. v. United States*, Consol. Court No. 18-00191 (CIT June 9, 2023).

## Timken Notice

In its decision in *Timken*,<sup>12</sup> as clarified by *Diamond Sawblades*,<sup>13</sup> the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s June 9, 2023, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

## Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Jilin Forest as follows:

<b>Exporter</b>	<b>Margin (percent)</b>
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.	0.00

## Cash Deposit Requirements

Because Jilin Forest has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

## Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were exported by Jilin Forest, and were entered, or withdrawn from warehouse, for consumption during the period December 1, 2015, through November 30, 2016.

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<sup>12</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>13</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.<sup>14</sup>

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: June 20, 2023.

James Maeder,  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations.

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<sup>14</sup> See 19 CFR 351.106(c)(2).