



A-570-970
NSR: 12/1/14 - 5/31/15
Public Document
E&C/IV: RG/AN

October 17, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty New Shipper Reviews: Multilayered Wood
Flooring from the People's Republic of China

SUMMARY

The Department of Commerce (Department) analyzed the comments submitted by Dongtai Zhangshi Wood Industry Co., Ltd. (Zhangshi) and Huzhou Muyun Wood Co., Ltd. (Muyun) in these new shipper reviews (NSRs) of the antidumping duty (AD) order on multilayered wood flooring (wood flooring) from the People's Republic of China (PRC). Based on our analysis of the comments received, we continue to find Zhangshi's single sale and Muyun's single sale to be non-*bona fide*. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On May 20, 2016, the Department issued the *Preliminary Results* of these NSRs for the period December 1, 2014 through May 31, 2015.¹ On July 7, 2016, the Department received case briefs

¹ See *Multilayered Wood Flooring From the People's Republic of China: Preliminary Rescission of 2014-2015 Antidumping Duty New Shipper Reviews*, 81 FR 34310 (May 31, 2016); see also Memorandum to Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, from Robert Galantucci, International Trade Analyst, Office IV, Antidumping and Countervailing Duty Operations entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Bona Fide Sale Analysis for Dongtai Zhangshi Wood Industry Co., Ltd.," dated May 20, 2016 (*Zhangshi Prelim Bona Fide Memo*); Memorandum from Aleksandras Nakutis, International Trade Analyst, Office IV, AD/CVD Operations, to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Bona Fide Sale Analysis for Huzhou Muyun Wood Co., Ltd.," dated May 20, 2016 (*Muyun Prelim Bona Fide Memo*).

from Zhangshi and Muyun.² On August 17, 2016, the Department held a hearing on this matter at the request of the parties.³

SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) 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, ultra-violet light cured 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, 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

² See Letter from Zhangshi to the Secretary of Commerce, “Multilayered Wood Flooring from the People’s Republic of China; A-570-970; New Shipper Review of Dongtai Zhangshi Wood Industry Co., Ltd.; Case Brief,” dated July 7, 2016 (Zhangshi Brief); *see also* Letter from Muyun to the Secretary of Commerce, “Multilayered Wood Flooring from the People’s Republic of China; Case Brief,” dated July 7, 2016 (Muyun Brief).

³ See Letter from Zhangshi to the Secretary of Commerce, “Multilayered Wood Flooring from the People’s Republic of China; A-570-970; New Shipper Review of Dongtai Zhangshi Wood Industry Co., Ltd.; Request for Hearing and Closed Hearing Request,” dated June 29, 2016; *see also* Letter from Muyun to the Secretary of Commerce, “Multilayered Wood Flooring from the People’s Republic of China Request for Closed Hearing,” dated June 30, 2016.

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 HDF, 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; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 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; 4412.99.5105; 4412.99.5115; 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; 4418.72.9500; and 9801.00.2500.

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

DISCUSSION OF THE ISSUES

In the preliminary results of these NSRs, the Department determined that Zhangshi’s single sale during the period of review (POR) and Muyun’s single sale during the POR were not *bona fide* sales. Therefore, the Department preliminarily rescinded the NSRs. Zhangshi and Muyun submitted comments on the Department’s preliminary results, and those comments are discussed below. A significant amount of factual information pertaining to the issues may not be publically disclosed because it is business proprietary in nature. Therefore, the Department has provided a public discussion of its analysis. For a complete discussion of the comments, which includes the business proprietary information (BPI) relied on by the Department in analyzing each issue, see the BPI discussion of Zhangshi’s and Muyun’s comments issued concurrently with this memorandum.⁴

⁴ See Memorandum to Abdelali Elouaradia, Final Results of the Antidumping Duty New Shipper Review – Multilayered Wood Flooring from the People’s Republic of China: Business Proprietary Information Discussion of the Comments Regarding Dongtai Zhangshi Wood Industry Co., Ltd.,” dated October 17, 2016 (*BPI Discussion of Zhangshi’s Comments*); Memorandum to Abdelali Elouaradia, Final Results of the Antidumping Duty New Shipper Review – Multilayered Wood Flooring from the People’s Republic of China: Business Proprietary Information Discussion of the Comments Regarding Huzhou Muyun Wood Co., Ltd.,” dated October 17, 2016 (*BPI Discussion of Muyun’s Comments*).

Comment 1: Whether the Department should revise its analysis with respect to Zhangshi's sales price and quantity.

In the preliminary results of this NSR, the Department determined that the price of Zhangshi's single sale of subject merchandise to the United States during the POR supported a finding that the sale was not *bona fide*.

Zhangshi's Comments:

- The Department should adjust certain comparison prices – namely the sales prices for Jiangsu Senmao Bamboo and Wood Industry Co. (Senmao), one of the mandatory respondents from the second administrative review (AR2) – to reflect the fact that Senmao was found to be dumping.
- The Department should adjust all AR2 comparison prices – *i.e.*, the sales prices for both AR2 mandatory respondents, Senmao and Dalian Dajen Wood Co., Ltd. (Dajen) – to reflect the difference in time between AR2 and the POR for this NSR. Specifically, the Department should increase the AR2 respondents' prices by 1.5 percent to account for inflation.
- It has been the Department's long-established practice to conclude that the price charged by a new shipper is reasonable when it falls within the range of the minimum and maximum prices of other respondents, even if such price falls towards the higher end.
- The Department failed to adequately take into account physical differences between Zhangshi's product and the products sold by the AR2 respondents.
- For the purposes of its price comparison, the Department should compare Zhangshi's sale price with the prices Zhangshi's importer paid for purchases of wood flooring from another source.
- The Department improperly adjusted Dajen's sale prices prior to its comparison with Zhangshi's sale.
- The Department should recalculate several of the adjustments that it made to Zhangshi's sale price in conducting its price comparison.
- The Department did not properly compare Zhangshi's sale quantity with the quantity of the sales made by the AR2 respondents.

Department's Position:

Adjustments for Duties

Zhangshi asserts that the Department must make adjustments to Senmao's prices for the purposes of our *bona fide* price comparison. Specifically, Zhangshi asserts that Senmao's prices must be increased to reflect the fact that Senmao was found to be dumping in AR2. Zhangshi argues that the Department should compare Senmao's prices to the price of Zhangshi's sale only after increasing Senmao's prices by the amount of the AD and countervailing duty (CVD) assessment. We disagree.

The Court of International Trade's (CIT) discussion in *Hebei New Donghua Amino Acid Co. v. United States* is instructive in this regard.⁵ There, New Donghua, the NSR respondent, asserted that in conducting its *bona fide* analysis, the Department should compare New Donghua's sale price with comparison prices that included AD duties. The court disagreed, explaining that:

New Donghua would prefer its sale be compared with the AUVs of Chinese glycine that include antidumping duties. ... Neither New Donghua's price nor the weighted AUV comparison prices for the POR {i.e., the comparison price data relied upon by the Department}, however, include the cash deposit paid. If Commerce were to compare the price of New Donghua's sale, which does not include the value of cash deposits paid, with weighted AUV data inclusive of cash deposits paid as a contingent liability, the result would be a distorted comparison of two different data types.⁶

Therefore, in *New Donghua*, the CIT made clear that in conducting a *bona fide* price comparison, sales must be compared on similar terms: prices that do not include AD duties should not be compared with prices that are inclusive of these costs. This approach is also consistent with Department practice.⁷

Moreover, it is important to recognize that the Department's analysis in the context of a *bona fide* analysis is different than in a dumping analysis. In a *bona fide* analysis, we are examining each sale for its commercial reasonableness, and are not attempting to ascertain the fair value of the merchandise.

Additional details on the Department's price comparison are contained in the *BPI Discussion of Zhangshi's Comments*, issued concurrently with this memorandum.

⁵ See *Hebei New Donghua Amino Acid Co. v. United States*, 374 F. Supp. 2d 1333 (CIT 2005) (*New Donghua*).

⁶ See *New Donghua*, 374 F. Supp. 2d at 1343; see also *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) ("*Warmwater Shrimp*") and accompanying Issues and Decision Memorandum at Comment 17.

⁷ See, e.g., *Xanthan Gum From the People's Republic of China: Rescission of 2014-2015 Antidumping Duty New Shipper Review*, 81 FR 56586 (August 22, 2016) and accompanying Issues and Decision Memorandum at Comment 2 ("We also disagree with IMJ's contention that the Department's comparisons should consider dumping and cash deposit rates. The Department does not adjust for cash deposit rates when calculating net prices in its price comparisons. ... There is no reason for the Department to depart from its practice here and IMJ has cited no precedent as evidence of past Department practice in this regard."); *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews*, 74 FR 50952 (October 2, 2009) and accompanying Issues and Decision Memorandum at Comment 3 ("Further, we disagree that the Department must inflate the other exporters' prices with the appropriate duty rate. The entered values that the Department uses from the CBP database, when making comparisons for its bona fides analysis, do not include the duty rates that will be assigned to each entry. As such, it would be inappropriate for the Department to include those duty rates into the analysis, because it would prevent an 'apples-to-apples' comparison."). We also note that, although Senmao was found to be dumping in AR2 in the aggregate, this fact alone does not demonstrate that Senmao's prices for all of its sales were dumped prices.

Inflation Adjustments

Zhangshi asserts that the Department should increase the value of the Senmao/Dajen comparison prices to account for inflation during the period between AR2⁸ and the POR. Specifically, Zhangshi asserts that the Department should increase the comparison prices by 1.5 percent. Finally, Zhangshi argues that the Department must adjust the comparison prices to reflect inflation because the Department makes such adjustments to surrogate values in its margin calculations.

We disagree. There is no record evidence indicating that the price of subject merchandise has increased between the comparison price period (*i.e.*, AR2) and the POR. Moreover, Zhangshi cites no basis for its proposed upward adjustment of 1.5 percent to the prices of the AR2 respondents. Accordingly, the Department does not find that such an adjustment is appropriate. Moreover, even if we made a 1.5 percent inflation adjustment to the AR2 prices, this would not change the Department's ultimate conclusions regarding Zhangshi's price.

Comparison Price Range

Zhangshi asserts that, pursuant to Department practice, a new shipper's sale price must be considered *bona fide* as long as it falls anywhere within the range of comparison prices relied upon by the Department. Zhangshi misstates Department practice.

As an initial matter, a range of comparison prices may contain outliers and aberrational values. Simply because a new shipper's sale(s) price falls within the outermost bounds of a price range, that fact alone does not compel the Department to conclude that the sale is indicative of future commercial practice.⁹ When a new shipper's price is at the high end of a price distribution, the Department has considered this to be a key factor in supporting a finding that the sale was not *bona fide*.¹⁰

Additionally, the CIT has specifically cautioned against comparing a new shipper's sale price exclusively to the prices at the top of the range of comparison prices.¹¹ Doing so can provide misleading results regarding the sale's commercial reasonableness. Rather, comparing a new

⁸ The Department notes that, at the time of issuance of our preliminary results, AR2 was the most recently completed review of this order.

⁹ *See, e.g., Warmwater Shrimp* and accompanying Issues and Decision Memorandum at Comment 17 (noting that where a new shipper's entry "ranked as one of the highest prices" when compared to a range of comparison prices, this supported a non-*bona fide* finding); *see also* Memorandum to the File, "Multilayered Wood Flooring from the People's Republic of China: Zhangshi and Muyun New Shipper Reviews – Department Practice," dated October 17, 2016 (Dept. Practice Memo), Attachment 1 at 3 (finding price to be atypical when the new shipper's sales prices were within the range of comparison prices for one product and outside the range of comparison prices for a second product).

¹⁰ *See, e.g., Warmwater Shrimp* and accompanying Issues and Decision Memorandum at Comment 17.

¹¹ *See Jinxiang Chengda Imp. & Exp. Co. v. United States*, Court No. 11-00144, Slip Op. 13-40 (*Jinxiang Chengda*), 14-18; *see also Zhengzhou Huachao Indus. Co., LTD. v. United States*, Court No. 11-00139, Slip Op. 13-61, 31-34 (Ct. Int'l Trade, May 14, 2013) (*Zhengzhou Huachao*) (explaining that the Department was not obligated to examine a subset of higher priced sales contained in the range of comparison prices when making its *bona fide* analysis).

shipper's sale price with an average price is often a more reliable approach.¹² In the instant case, a comparison of Zhangshi's single sale price with the average prices of Senmao and Dajen supports our determination.¹³

Zhangshi cites to *Off-the-Road Tires* and *Multilayered Wood Flooring* to support its position that its sale is *bona fide* because its sale price is within the range of the minimum and the maximum price of other respondents.¹⁴ Zhangshi cites to information that is not on the record of this proceeding. This makes it impossible for the Department and other parties to evaluate this evidence and reach any educated conclusion that the Department's analysis in those reviews is indicative of Department practice more generally.¹⁵ In any event, in the instant case, when we limit the analysis to sales of merchandise that is most similar to that sold by Zhangshi, the results support our conclusion.

A more detailed discussion of the Department's price comparison is contained in the *BPI Discussion of Zhangshi's Comments*.

Physical Differences between Zhangshi's Product and the Comparison Merchandise

Zhangshi asserts that the Department failed to take into account the physical differences between its product and the merchandise sold in the sales underlying the AR2 comparison data. In the preliminary results, the Department compared Zhangshi's sale price to the full range of sales by the two mandatory respondents (*i.e.*, Dajen and Senmao). Given that we did not have an identical product match in the comparison data, the Department compared Zhangshi's sale price to the complete distribution of prices for all sales of wood flooring for both mandatory respondents; this merchandise varied in terms of veneer type, veneer thickness, core composition, number of plies, etc., all of which influence the price of wood flooring.

We have included an additional price comparison for our final results that specifically examines the prices of the AR2 respondents' sales of merchandise that is most similar to Zhangshi's merchandise based on the unique control numbers (CONNUMs) established in this proceeding. In this way, the Department has accounted, to the extent possible, for any physical differences in its price comparison. This CONNUM-based analysis continues to support the Department's conclusions regarding Zhangshi's sale price.

The Department's price comparison is contained in the *BPI Discussion of Zhangshi's Comments*.

¹² See *Jinxiang Chengda*, at 14-18 (rejecting new shipper's argument that its sales price should have been compared to a "range of prices in order to show that Chengda's transfer sales price was close to at least some similarly-priced entries of peeled garlic, although it was much higher than the AUV"); see also *Zhengzhou Huachao*, at 31-32.

¹³ See *BPI Discussion of Zhangshi's Comments* at pages 9-13 and Attachment 1 (Tab 3).

¹⁴ See Zhangshi's Brief at 10-11 (citing *Antidumping Duty New Shipper Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Bona Fide Sales Analysis for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.*, dated February 26, 2013 ("OTR Tires BFM"), and *Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Bona Fide Sale Analysis for Dalian Huade Wood Product Co., Ltd.*, dated June 6, 2014).

¹⁵ See, e.g., *Warmwater Shrimp* and accompanying Issues and Decision Memorandum at Comment 17; see also Dept. Practice Memo, Attachment 1 at 3.

Importer's Purchases from Other Sources

Zhangshi contends that the Department, in its price comparison, should place greater weight on the prices Zhangshi's customer paid for wood flooring from another supplier.¹⁶ In our preliminary results, we considered these prices, but determined that this data was less probative than the data from the AR2 respondents for multiple reasons.

We continue to find the prices paid by Zhangshi's customer to be less probative. First, as the Department stated in its preliminary analysis, the AR2 respondents made a large number of sales of wood flooring. Given the numerous data points for comparison, the Department considered the AR2 respondents' pricing data to be more reliable than Zhangshi's customer's purchase data. In this regard, even when the Department relied on a select portion of the AR2 databases for its price analysis – in particular, when we compared prices for sales of merchandise most similar to Zhangshi's merchandise¹⁷ – we still had a far larger number of comparison sales for our analysis.

Second, Zhangshi asserts that its customer's purchases of merchandise from other sources consisted of flooring that was more similar (*i.e.*, in terms of physical characteristics) to that sold by Zhangshi, when compared to the AR2 respondents' sales.¹⁸ The limited information provided by Zhangshi regarding its customer's purchases relates to three product characteristics. In contrast, the databases covering the AR2 respondents' sales include unique CONNUMs that denote seven product characteristics for each sale.¹⁹ These CONNUMs provide product details on: veneer type, surface treatment, veneer thickness, core composition, core thickness, number of plies and type of locking mechanism. Therefore, the comparison data relied upon by the Department actually provides greater specificity than the data relating to Zhangshi's purchases from an alternate source. A description of our CONNUM-specific analysis is contained in our *BPI Discussion of Zhangshi's Comments*.²⁰

With respect to Zhangshi's questionnaire responses concerning its importer, we received inconsistent statements from Zhangshi. In particular, there are inconsistencies on the record regarding the importer's affiliations. Zhangshi asserts that these statements are not important to the Department's analysis. We disagree. The Department examines information supplied by importers in the Department's Importer-Specific Questionnaire²¹ for a variety of reasons. As Zhangshi recognizes, one of these reasons is to determine that there is no relationship between the exporter and the importer. However, affiliation information is also important to the Department's analysis for other considerations. The Department would find it relevant, for instance, if the importer is related to the ultimate customer, or is related to other exporters of subject merchandise.

¹⁶ See Zhangshi's Brief at 11-12.

¹⁷ See *BPI Discussion of Zhangshi's Comments* at pages 9-13 and Attachment 1 (Tab 3).

¹⁸ See Zhangshi's Brief at 17.

¹⁹ See Memorandum to the File, through Robert Bolling, from Robert Galantucci, "New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – US Sales Data from the Second Administrative Review," dated April 12, 2016 (AR2 Data Memo).

²⁰ See *BPI Discussion of Zhangshi's Comments* at pages 9-13 and Attachment 1 (Tab 3).

²¹ A set of importer-specific questions are included as part of the Department's initial questionnaire. Additionally, in this matter we asked a number of supplemental questions concerning the importer.

Despite the potential importance of the requested information, Zhangshi failed to accurately and comprehensively respond to the Department's questions regarding the importer. On multiple occasions, the Department asked Zhangshi to identify the importer's affiliates. In the Department's initial questionnaire, we asked Zhangshi to “{p}rovide a list of all companies affiliated with your importer,” and we provided a definition of what constitutes an affiliated party under the Department's regulations.²² Zhangshi responded to the question, stating that “the importer has no affiliated companies.”²³ In a supplemental questionnaire, the Department again asked whether the importer had any affiliates, and specifically identified a company by name. In response to this question, Zhangshi stated that the importer was in fact affiliated with the named company.²⁴ It was only after being specifically prompted by the Department to acknowledge an affiliation with this particular company that Zhangshi/the importer acknowledged the affiliation. In another supplemental questionnaire, the Department once again asked that Zhangshi (or the importer itself) identify all persons and entities related to the importer, and stated that the importer could file its response directly with the Department, if it preferred to do so. In response, Zhangshi indicated that it had already provided a comprehensive list of companies affiliated with the importer. We disagree. The record still suggests that the Department has not received a complete and accurate response in this regard, as sales documentation on the record references a previously-unidentified company.²⁵ Based on the inconsistent and incomplete responses concerning the importer, the Department cannot conclude that it was presented with a complete list of affiliated parties.

With regard to the inaccuracies regarding the importer's affiliations, Zhangshi also asserts that “the law and regulation allows every respondent an opportunity to correct its responses in supplemental questionnaires.”²⁶ The Department requested information concerning the importer's affiliations from Zhangshi in multiple supplemental questionnaires. After requesting affiliated party information on numerous occasions, we conclude that, based on record evidence, we have not received a complete and accurate response to our questions.

Finally, Zhangshi asserts that the Department opted to forego verification, and thus should not question the accuracy of the importer's data.²⁷ Specifically, Zhangshi asserts that the importer's purchase data (*i.e.*, the prices/quantities of purchases from another supplier of wood flooring) should not be questioned by the Department.²⁸ However, the Department requested a variety of data relevant to the importer's purchasing and sales practices, and relevant portions of this data are incorrect and/or incomplete. The fact that the Department did not verify the importer does not remedy the deficiencies in Zhangshi's responses regarding the importer.²⁹

²² See Zhangshi's Sept. 8, 2016 Submission (Zhangshi's Sec. C&D Response), at Appendix IX, at 1.

²³ See *id.*

²⁴ See Letter from Zhangshi to the Secretary of Commerce, “Multilayered Wood Flooring from the People's Republic of China; A-570-970; Response to Third Supplemental Questionnaire by Dongtai Zhangshi Wood Industry Co., Ltd.,” dated April 14, 2015 (Zhangshi's Third Supp. Response), at 3.

²⁵ *Id.* at Exhibit S3-1; see also *BPI Discussion of Zhangshi's Comments*.

²⁶ Zhangshi's Brief at 29.

²⁷ *Id.* at 18.

²⁸ *Id.*

²⁹ Zhangshi also asserts that the Department implied that the AR2 data was verified. We did not. The Department stated that the importer's prices constituted prices from a “single, unverified importer.” See *Zhangshi Prelim Bona Fide Memo* at 5. We simply considered this factor, among others, in determining that the presence of data on the importer's purchases from another supplier did not justify disregarding the AR2 data on the record.

As discussed above, information concerning an importer's corporate structure and behavior is important to the Department's analysis. In numerous cases, the CIT has affirmed the Department's practice of considering the consistency and accuracy of an importer's statements in the context of *bona fide* analyses.³⁰ When we examined the responses regarding the importer/customer here, we found that the responses further call into question the *bona fide* nature of the sale. See *BPI Discussion of Zhangshi's Comments* for additional details.

Adjustments Implemented Prior to Price Comparison

In conducting its *bona fide* analysis in conjunction with the preliminary results, the Department described various adjustments it made to Zhangshi's sale price and the comparison sale prices from AR2 to arrive at the final prices used in the comparison. These adjustments were required to facilitate an apples-to-apples comparison between prices. Because our analysis of this comment relies heavily on BPI, the discussion is contained in our *BPI Discussion of Zhangshi's Comments*.

Consistent with our preliminary results, the Department finds that a comparison between Zhangshi's sale price and the Senmao/Dajen sales prices supports a finding that Zhangshi's sale was non-*bona fide*.

Quantity of Zhangshi's Sale

Zhangshi asserts that the Department's analysis with respect to quantity was flawed. Zhangshi asserts that "the Department notably did not discuss the quantities of the sales in AR2," and further states that the Department's conclusion that "the customer typically purchased larger quantity {sic} from other sources" was "contrary to record evidence."³¹ The Department explicitly considered the quantity of Zhangshi's sale, and compared its sales quantity to the quantity of sales in AR2 as well as the quantities of Zhangshi's customer's purchases from other sources. Zhangshi's assertions to the contrary are entirely without merit. Because the analysis regarding sales quantity relies heavily on BPI, the discussion of this comment is contained in our *BPI Discussion of Zhangshi's Comments*.

Comment 2: Whether the Department should revise its analysis regarding Zhangshi's customer's resale of the subject merchandise.

In the preliminary results of this NSR, the Department considered information submitted to support Zhangshi's contention that the subject merchandise was resold at a profit. The Department determined that this information did not alter our conclusion that the totality of the circumstances warranted a finding that the sale was non-*bona fide*.

³⁰ See *Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory v. United States*, 920 F. Supp. 2d 1350, 1359-1360 (Ct. Int'l Trade 2013) (*Foshan Nanhai*); see also *Zhengzhou Huachao*, at 72 ("The court finds that the inconsistencies in Huachao's U.S. customer's responses to Commerce's questionnaires, and its failure to provide all of the information the Department requested, lends additional support to Commerce's finding of a non-*bona fide* sale under the 'totality of the circumstances' test.").

³¹ See Zhangshi's Brief at 19.

Zhangshi's Comments:

- The record indicates that the customer/importer was able to resell the merchandise at a profit, and this supports a finding that the sale was *bona fide*.

Department's Position:

The Department agrees, in part. As noted in our *Zhangshi Prelim Bona Fide Memo*, Zhangshi provided information that was consistent with its assertions concerning the customer's ability to resell the merchandise at a profit.³² The Department has not identified inconsistencies between Zhangshi's statements regarding resale and the corresponding resale documents, *e.g.*, invoices, bank transfer documents.

However, the CIT has explained that "a profit on resale cannot establish the *bona fides* of the sale where there is other evidence suggesting that the sale is not *bona fide*," because "the existence of a profit does not provide significant evidence of whether the sale price is typical for the market as a whole, or for Plaintiff's *{i.e., a new shipper's}* future practice in particular."³³ Therefore, Zhangshi's statements regarding its ability to resell the merchandise at a profit does not demonstrate, on its own, that the sale was *bona fide*. Instead, as discussed throughout this memorandum and the *BPI Discussion of Zhangshi's Comments*, the Department finds the sale not *bona fide* based on a totality of the circumstances including the price, issues surrounding payment, the parties' implementation of the terms of sale, and the statements regarding the customer/importer's affiliations.³⁴

Comment 3: Whether the Department should revise its analysis regarding Zhangshi's implementation of the terms of sale.

In the preliminary results of this NSR, the Department determined that Zhangshi's transaction with its U.S. customer did not comport with the terms of sale provided for in the contract. This factor supported the Department's determination that the sale was non-*bona fide*.

Zhangshi's Comments:

- Zhangshi's sale to its customer was carried out in a manner consistent with the terms of sale provide for in the contract.

³² See *Zhangshi Prelim Bona Fide Memo* at 7.

³³ See *TTPC*, 366 F. Supp. 2d 1246, 1257.

³⁴ Furthermore, as explained above, the Department has doubts regarding the reliability of other data provided by Zhangshi's customer/importer. Zhangshi asserts that inconsistencies in the importer's responses are "ultimately not relevant" to the *bona fide* analysis. Zhangshi also asserts that our inquiry into the importer's behavior "ignores the law." Zhangshi's Brief at 28. This is incorrect. The Department regularly considers the behavior of importers in conducting its *bona fide* analyses in NSRs. See *Jinxiang Yuanxin Imp. & Exp. Co., Ltd. v. United States*, Slip Op. 13-77 (Ct. Int'l Trade, June 18, 2013) (*Jinxiang Yuanxin*); see also *Foshan Nanhai* at 22-23.

Department's Position:

We disagree. As the Department stated in its preliminary results, we find it significant that the parties did not strictly adhere to the agreed upon terms of sale. Examining whether the parties' behaved in a manner consistent with the sale agreement is consistent with Department practice,³⁵ and we regularly assess whether new shippers provide contradictory information regarding the terms of sale in *bona fide* analyses.³⁶ This consideration, when viewed in conjunction with the other factors identified in this analysis, supports our finding that the sale is not indicative of future commercial practice. Additional discussion of this comment is contained in our *BPI Discussion of Zhangshi's Comments*.

Comment 4: Whether the Department should revise its analysis regarding the circumstances surrounding Zhangshi's receipt of payment.

In the preliminary results of this NSR, the Department determined that the timing of the payment, and the amount of the payment, supported its determination that the sale was non-*bona fide*.³⁷

Zhangshi's Comments:

- The Department should not consider the circumstances surrounding the customer's payment to be atypical, and the circumstances of the payment should not undermine a finding that the sale was *bona fide*.

Department's Position:

The timing of the payment to Zhangshi, by itself, would be insufficient to warrant a finding that the sale was non-*bona fide*. Nonetheless, the timing of a customer's payment is a factor that the Department routinely considers in *bona fide* sale analyses.³⁸ Given the single sale, and the limited information on the record, the Department is unable to establish that the circumstances surrounding the payment to Zhangshi constitute a typical business practice for the parties here.

Moreover, Zhangshi's statements regarding industry practice in this regard are unavailing. Zhangshi argues that "{t}he Department ... never established that, within the industry, that {the circumstances surrounding the payment constituted} a deviation from normal practice."³⁹ It is not the Department's obligation to develop the record regarding the typical practice within the industry. If Zhangshi had additional relevant evidence that its sale was *bona fide*, or that the

³⁵ See, e.g., *Notice of Final Rescission of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 68 FR 68028 (December 5, 2003) and accompanying Issues and Decision Memorandum (*Crawfish IDM*); see also *Fresh Garlic From the People's Republic of China: Final Rescission of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Kaihua Imp & Exp Co., Ltd.*, 80 FR 60881 (October 8, 2015) and accompanying Issues and Decision Memorandum at Comment 4 (*Garlic IDM*).

³⁶ See, e.g., *Crawfish IDM*; *Garlic IDM*.

³⁷ See *Zhangshi Prelim Bona Fide Memo* at 7.

³⁸ See TTPC, 366 F. Supp. 2d at 1258-1262.

³⁹ See *Zhangshi's Brief* at 25.

procedures of this sale were representative of normal business practices, the burden was on Zhangshi to place such information on the record in a timely manner.⁴⁰

The remainder of our discussion of this comment is contained in our *BPI Discussion of Zhangshi's Comments*.

Comment 5: Whether the Department made procedural errors in conducting this review.

Zhangshi and Muyun assert that the Department made a number of procedural errors during the course of this NSR.

Zhangshi's Comments:

- It is unclear whether the Department has the legal authority to place BPI from other segments on the record.
- The Department should have placed additional information on the record concerning the AR2 respondents to allow Zhangshi to meaningfully comment.
- The Department erred by placing comparison data on the record because the Department did not instruct the parties as to the intended use of the data.
- The use of third-party BPI prevented Zhangshi from sharing the Department's determination with its client.
- The Department improperly failed to release calculations relating to the price adjustments made prior to comparing Zhangshi's price with the AR2 comparison prices.

Muyun's Comments:

- The Department placed sales data from AR2 on the record without stating its intended use for the data. Muyun filed a letter with the Department asking for clarification as to the purpose of such data, and asked the Department to issue Muyun a supplemental questionnaire with any questions concerning their own data. The Department's responses offered no clarification, and only stated that the data may be used in the analysis of the NSR. Muyun filed another letter stating that the relevance of the data was unclear, and that Muyun would be unable to provide meaningful comments.
- The Department's actions were not in accordance to its regulatory obligations under Section 782 of the Tariff Act of 1930, as amended (the Act). The Department must disregard the AR2 data for the final results.
- Had Muyun been informed of the intended purpose of the data, it could have filed comprehensive comments before the preliminary results, provided additional information, or requested the Department to rely on more reliable data in its sales price analysis.

Department's Position:

The Department disagrees with Zhangshi's and Muyun's assertions that we made procedural errors in conducting these NSRs.

⁴⁰ See *Zenith Electronics Corp. v. United States*, 988 F. 2d 1573, 1583 (Fed. Cir. 1993); see also *Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) ("The burden of creating an adequate record lies with respondents and not with Commerce.").

First, Zhangshi, without citing any authority for its argument, questions whether the Department is permitted to place third-party BPI on the record for its analysis (*i.e.*, the AR2 mandatory respondents' sales databases).⁴¹ In NSRs, the Department regularly places third-party pricing data on the record in order to conduct its *bona fide* analysis.⁴² In fact, one of the excerpts provided by Zhangshi in its own case brief explicitly states that the Department relied on comparison data from administrative reviews as part of its price analysis.⁴³

In any case, both mandatory respondents in AR2 (Senmao and Dajen) submitted BPI to the Department and were fully aware that the BPI could be used in a future segment, as is explicitly provided for in the administrative protective order (APO) covering their submissions. Therefore, in submitting their BPI pursuant to the APO, both respondents authorized future usage of the information, and limited disclosure of the BPI is consistent with Section 777(c)(1) of the Act.

Second, Zhangshi asserts that the Department should have provided more information about the AR2 respondents. In particular, Zhangshi asserts that the Department should have placed on the record the Section C and D narrative responses for the mandatory respondents.⁴⁴ Zhangshi again does not cite any authority for this proposition. Moreover, if Zhangshi sought to obtain a public version of the AR2 respondents' narrative responses, it could have done so via the Department's centralized electronic service system, ACCESS.⁴⁵

Third, Zhangshi and Muyun assert that the Department should have explained the precise manner in which it would use the AR2 sales data that it placed on the record. We disagree. The preliminary results provided the parties with adequate notice of how the Department was using these data in this NSR and the Department was under no obligation to explain its intended use for the data prior to its preliminary results. Upon issuance of our preliminary results, we described the purpose for which we used the data, and explained why such data was appropriate for a price comparison.⁴⁶ After release of our preliminary results, the interested parties were provided with an opportunity to comment on the Department's price comparison in their case briefs.

Further, while Zhangshi asserts that it did not know the purpose for which such data was placed on the record, its own statements suggest otherwise. For instance, in its April 19, 2016 submission, Zhangshi argued that the data was not contemporaneous, did not relate to an identical product, and may have had different conditions of sale.⁴⁷ Zhangshi argued that “{t}o the extent that these prices are to be compared to the prices in Zhangshi's responses,” the data

⁴¹ See Zhangshi's Brief at 16.

⁴² See, e.g., Dept. Practice Memo at Attachment 1 and 2. In some instances, the Department relies on pricing data obtained from CBP. Here, CBP entry data is not ideal for comparison purposes, and for this reason, in recent administrative reviews of the order on multilayered wood flooring, the Department relied in part on “quantity and value” questionnaires for the purposes of respondent selection.

⁴³ See Zhangshi's Brief at 10 (citing OTR Tires BFM at 3-4).

⁴⁴ *Id.* at 36.

⁴⁵ Muyun has indicated that it did in fact obtain a copy of the public version of Senmao's narrative response. See Muyun Brief at 11.

⁴⁶ See, e.g., *Zhangshi Prelim Bona Fide Memo* at 3-5.

⁴⁷ See Letter from Zhangshi to the Secretary of Commerce, “Wood Flooring from China (A-570-970); Comments on Certain Data Placed on the Record,” dated April 19, 2016, at 3-4.

were deficient.⁴⁸ Similarly, the other new shipper respondent in this matter, Muyun, argued in its April 19, 2016 submission that “sales prices that are not contemporaneous with the new shipper POR are not relevant to or probative of market conditions in the new shipper POR.”⁴⁹ These arguments demonstrate that Zhangshi was, in fact, aware of the potential use of the data as part of a price comparison. Given these arguments, Zhangshi can hardly assert that it was unaware that the Department could potentially use such data for price comparisons, as is a common practice in NSR *bona fide* analyses.

Fourth, Zhangshi contends that its client was prevented from participating in this proceeding because the Department’s preliminary *bona fide* memorandum contained BPI from multiple parties, and in certain instances BPI from various parties was combined.⁵⁰ Accordingly, Zhangshi asserts that it was not able to directly examine the Department’s price figures, and thus was unable to fully participate in the proceeding. We disagree. Zhangshi’s counsel had the ability to examine the source data under the APO. Moreover, when dealing with BPI in AD/CVD proceedings, there are numerous instances where the Department’s analysis combines data from multiple parties. This was not unique to this proceeding. For instance, as part of its selection of the “All-Others” rate in antidumping and countervailing duty investigations, the Department often relies on sales data from two or more respondents to calculate average dumping margins or subsidy rates. From these averages, the Department selects one for use as the “All-Others” rate.⁵¹ These calculations cannot be shared directly with the parties, because company officials could potentially “back out” the BPI of the other party(ies) to the proceedings. The same is true here.

Fifth, Zhangshi asserts that the Department improperly failed to release the calculations associated with its price comparison. We again disagree. As an initial matter, the release of “calculations” under 19 CFR 351.224 is applicable to situations where the Department calculates a dumping margin or subsidy rate,⁵² not to the Department’s *bona fide* analysis in a NSR. Nevertheless, the Department has attached a spreadsheet to its *BPI Discussion of Zhangshi’s Comments* displaying the calculations made by the Department as part of its price comparisons in the final results of this NSR.

In sum, the Department disagrees with Zhangshi’s and Muyun’s assertions concerning alleged procedural errors in this review.

⁴⁸ *Id.*

⁴⁹ See Letter from Muyun to the Secretary of Commerce, “Multilayered Wood Flooring from the People’s Republic of China Response to POR 2 U.S. Sales Data Placed on the Record,” dated April 19, 2016, at 1-2.

⁵⁰ See Zhangshi’s Brief at 33-34.

⁵¹ For instance, with two respondents, the Department normally calculates (A) a weighted-average of the dumping margins calculated for the respondents; (B) a simple average of the dumping margins calculated for the respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company’s publicly-ranked sales data for the merchandise under consideration. We compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. See, e.g., *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). These calculations are typically contained in a memorandum placed on the record.

⁵² See, e.g., 19 CFR 351.224(d) (providing that comments under this subsection concerning a preliminary determination must demonstrate how the alleged ministerial error affects *the dumping margin or subsidy rate*) (emphasis added); see also 19 CFR 351.224(g) (same).

Comment 6: Whether Muyun's sale was resold at a profit.

In the preliminary results of this NSR, the Department determined that Muyun's customer had not provided record evidence that the subject merchandise was resold at a profit. This fact contributed to our determination that the totality of the circumstances indicated that the sale was *non-bona fide*.

Muyun's Comments:

- Muyun and its U.S. customer provided resale invoices to downstream unaffiliated U.S. customers.⁵³ The resale invoices show that Muyun's merchandise was resold at a profit, even when accounting for the expenses incurred.
- Additionally Muyun provided information regarding its U.S. customer's purchases of flooring from other suppliers, including the dates, purchase quantities, and values of those purchases, as requested by the Department.⁵⁴ This information shows that the U.S. customer purchases similar merchandise at an even higher price when buying from suppliers other than Muyun. There is no reason to suspect that Muyun will not be able to sell the subject merchandise in the same price range based on market conditions in the future. The Department should determine that Muyun's POR U.S. sale was *bona fide*.

Department's Position:

The Department agrees, in part. The resale invoices do show that the subject merchandise sourced from Muyun was resold at a profit. There are, however, several caveats associated with the Department's finding in this regard. Because much of the analysis for this comment relies on BPI, additional discussion regarding resale profitability is contained in the *BPI Discussion of Muyun's Comments*.⁵⁵

Moreover, while resale profitability has been established, the above-referenced caveats notwithstanding, the CIT has explained that "a profit on resale cannot establish the *bona fides* of the sale where there is other evidence suggesting that the sale is not *bona fide*," because "the existence of a profit does not provide significant evidence of whether the sale price is typical for the market as a whole, or for Plaintiff's {i.e., a new shipper's} future practice in particular."⁵⁶ As such, even though the record evidence indicates that Muyun's customer was able to resell at a profit, as discussed throughout this memorandum and in Comment 9, *infra*, in particular, the Department continues to find that Muyun's sale is not *bona fide* based on a totality of the circumstances.

⁵³ See Letter from Muyun to the Secretary of Commerce, "Multilayered Wood Flooring from the People's Republic of China Third Supplemental Questionnaire Response," dated May 18, 2016 (Muyun's Third Supp. Response) at Exhibit SQ3-1.

⁵⁴ *Id.* at Exhibit SQ3-2.

⁵⁵ See *BPI Discussion of Muyun's Comments*.

⁵⁶ See TTPC, 366 F. Supp. 2d 1246, 1257 (CIT 2005).

Comment 7: Whether the timing of Muyun’s sale was consistent with normal commercial practices.

In the preliminary results of this NSR, the Department determined that certain aspects of the timing of Muyun’s sale were atypical, namely the short sales process and the timing of the payment.

Muyun’s Comments:

- The Department found that the short sales process and payment date on the last day of the new shipper period were both atypical; however, the Department did not provide any explanation about why a quick sale is necessarily atypical or not grounded in commercial considerations.
- Muyun made contact with its unaffiliated U.S. customer at a trade show. Negotiations occurred through e-mail. The Department characterized the price negotiations as occurring in one day. However, this is not precisely accurate; this was not the first communication between the parties. The parties discussed prices and sales requirements earlier, at the trade show. Thus, the price negotiation is reasonable in the context of prior communication.⁵⁷
- The Department also implied that the fact that final payment occurred at the end of the POR was somehow abnormal or suspect. Negotiations occurred in April and the U.S. customer requested that it receive the shipment by the end of the next month.⁵⁸ Accordingly, Muyun shipped the flooring as soon as it was able to do so, and the shipment entered the U.S. and then was transported to the U.S. customer.
- The unaffiliated customer determined the date it wished to receive the subject merchandise, and paid Muyun within a reasonable time after receiving the merchandise.
- The date of payment has nothing to do with the sales date or whether a sale falls during the POR. Instead, the date of sale is the date of invoice at which time all material terms are finalized, pursuant to Department practice. The Department did not provide any explanation as to why a sale at the end of the POR is suspect.
- The Department has often extended the POR for NSRs to include a sale that is finalized and exported during the POR but that entered the U.S. after the anniversary month.⁵⁹
- Muyun could have sold a shipment later and still requested a NSR. The reason the POR of this new shipper is December 1, 2014 to May 30, 2015 is because Muyun’s sale falls in the six-month period from the last anniversary month. If Muyun had made its sale later, it would still meet the requirements for a NSR but would have a one-year POR from December 1, 2014 to November 30, 2015. Under those conditions, Muyun’s sale

⁵⁷ See Letter from Muyun to the Secretary of Commerce, “Multilayered Wood Flooring from the People’s Republic of China - Section A Response,” dated August 26, 2015 (Muyun Sec. A Response) at Exhibit A-4.

⁵⁸ *Id.*

⁵⁹ Muyun Brief at 7 (citing *Multilayered Wood Flooring from the Peoples Republic of China: Initiation of Antidumping Duty New Shipper Reviews; 2012-2013*, 78 FR 46318 (July 31, 2013); *Multilayered Wood Flooring Preliminary Results of Antidumping Duty New Shipper Reviews; 2012-2013*, 79 FR 33723 (June 12, 2014) and accompanying Issues and Decision Memo at 4; see also *Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review*, 75 FR 5763 (February 4, 2010); *Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China: Notice of Preliminary Results of the New Shipper Review*, 75 FR 47270 (August 5, 2010)).

would be in this middle of this POR and the timing would not be atypical according to the Department's logic.

- Therefore, there is no reason to find that the timing of Muyun's sale was atypical or in designed simply to qualify the company for a NSR.

Department's Position:

The Department agrees that the quickness of sales negotiations and payment at the end of the POR would not, alone, render Muyun's sales non-*bona fide*. The Department also agrees that given the prior communication between Muyun and its customer at an earlier trade show, the short negotiation period is not atypical. However, the Department disagrees with Muyun that the timing of the payment was reasonable. For additional discussion on this point, *see the BPI Discussion of Muyun's Comments*.

Further, we agree that the Department has the option to extend a POR when a new shipper's sale was finalized and exported during the POR but entered the U.S. after the POR. We also agree that, had the sale been made later in the year, Muyun would have still been eligible for a NSR with a December 1, 2014 to November 30, 2015 POR. However, despite these considerations, there are still factors that call into question the *bona fide* nature of the sale. For additional discussion on this point, *see the BPI Discussion of Muyun's Comments*.

Comment 8: Whether Muyun's sale price was based on normal commercial considerations.

In the preliminary results of this NSR, the Department determined that Muyun's sale price was atypically high in comparison with Senmao's AR2 sales.

Muyun's Comments:

- The Department determined that Muyun's sale price was atypically high when compared to Senmao's entered values for similar products during the December 1, 2012 to November 30, 2013 period. However, the Department failed to consider Senmao's dumping margin, the non-contemporaneity of the data, the range in Senmao's own prices, and the comparability of Senmao's products.
- The Department's decision to rely on one individual respondent's entered values from a non-contemporaneous period is not the typical *bona fide* analysis. The Department generally compares "a respondent's selling price during the POR to sales made by other exporters during the POR, or to a respondent's own sales, whether these sales were made to third country markets or to the United States after the POR."⁶⁰ The Department did

⁶⁰ Muyun Brief at 8 (citing *Fresh Garlic Preliminary Intent to Rescind the New Shipper Review of Jinxiang Huameng Imp & Exp Co., Ltd.*, 81 FR 33209 (May 25, 2016) and accompanying Preliminary Decision Memorandum at 3 and *Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 62053 (October 31, 2003) and accompanying Issues and Decision Memorandum at Comment 1)); *see also Certain Cased Pencils Preliminary Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 37573 (June 10, 2016) and accompanying Preliminary Decision Memorandum at 4; *Freshwater Crawfish Tail Meat Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014*, 80 FR 60624 (October 7, 2015) and accompanying Preliminary Decision Memorandum at 4 (*Crawfish*

not follow its typical practice in this review and did not adequately explain why the best comparison for Muyun's sale was one single respondent's sales from several years prior.

- The Department compared Senmao's entered value for a comparable product from AR2 to Muyun's entered value in the 2014-2015 NSR. However, Senmao's entered value was not a fair value price because the Department determined that Senmao was dumping with a margin of 13.74 percent.⁶¹
- It is not appropriate for the Department to compare Muyun's export price with Senmao's dumped prices.⁶² The Department is essentially indicating that for Muyun to have a typical export price, Muyun must have exported at a dumped price. The Department's approach creates a dilemma wherein a new shipper can only export to the U.S. at a dumped price; if the new shipper sells at a fair price, the transaction would be considered atypical and thus not *bona fide*.
- If the Department intends to determine whether Muyun's export price was abnormal using Senmao's sales prices, it should compare Muyun's sale with a fair price, *i.e.* adjust Senmao's export price upwards by 13.74 percent. Doing so, the Department would find that Muyun's export price was within the range of Senmao's prices.
- The Department also has a practice of looking at whether a new shipper's sale price was within range with other prices – *i.e.* there were higher and lower sales prices from other exporters – rather than comparing the new shipper price to the exporters' average price.⁶³
- Senmao's product has a large price range in consideration of market forces and other relevant market factors; in addition the product quality, delivery dates, or terms is likely different, which affects the selling price. The Department did not verify Senmao in AR2 and there is no reason to assume its sales data is more reliable than the importer's purchase data on this record.
- Muyun's U.S. customer provided its purchase prices from other suppliers for the same model during and after the POR. These data present a better comparison because the data are for identical merchandise and are contemporaneous. The data show that the importer paid similar or even higher prices for the same product from other suppliers.
- The Department attempted to limit its analysis and comparison of Muyun's sale to Senmao's closest CONNUM; however, the Department selected one of Senmao's CONNUMs which was a lower quality than that of Muyun's subject merchandise. Senmao exported a number of varieties of hickory wood; the CONNUMs entered by Senmao show that many CONNUMs with two or three different product characteristics have a much higher value than Muyun's entered value. Differences in the product characteristics meaningfully impact the quality and prices of products.; the Department should have also considered the higher end hickory wood flooring entered by Senmao.

2015); *Certain Preserved Mushrooms Preliminary Results of Antidumping Duty Administrative Review, and Rescission in Part; 2014/2015*, 80 FR 68836 (November 6, 2015) and accompanying Preliminary Decision Memorandum at 4).

⁶¹ See *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41478 (July 15, 2015).

⁶² Muyun Brief at 9 (citing *Drawn Stainless Steel Sinks Final Affirmative Antidumping Duty Determination*, 78 FR 13019 (February 26, 2013) and accompanying Issues and Decision Memorandum (“where dumped imports of Japanese and Taiwanese cold rolled sheet were excluded from evaluation and other prices were disregarded even as benchmarks because they contained similarly distorted value”)).

⁶³ Muyun Brief at 10 (citing *Crawfish 2015* at 4).

- Muyun argues that Senmao's CONNUMs do not cover all the product characteristics of the subject merchandise that might affect selling price. These additional product characteristics are not listed, and as such it is unknown whether Senmao's products had these characteristics. Such characteristics can reasonably explain the slightly higher price of Muyun's sale.
- Muyun argues that this product is not a commodity and as a result the market price tends to be volatile. Failing to take this consideration into account, the Department placed undue weight on the Senmao price range and percent differences in prices.
- The Department did not consider changes in the market when it compared Muyun's price to sales two years prior to its sale. This time difference is large and it is not appropriate for the Department's entire analysis of the sales price to be determined by significantly non-contemporaneous data. Muyun's U.S. customer provided its purchase prices from other suppliers for the same model during the POR which are comparable to Muyun's price, and even higher than Muyun's entered value.⁶⁴ These prices are a far more reasonable indicator (*i.e.*, contemporaneous and identical) that Muyun sold at a *bona fide* price.

Department's Position:

Adjustments for Antidumping (AD) Duties

As stated in Comment 1, above, the Department will not make the upward adjustment to the prices of Senmao's merchandise because the prices should reflect the same terms and costs as Muyun's sale.

Muyun also argues that the Department has a practice of looking at the range of prices from other exporters rather than comparing to the exporters' average price, and cites to *Crawfish 2015* in which the price was compared to individual per-unit prices in the CBP entry data. In the instant case, the Department did compare Muyun's sale price with Senmao's range of prices (in addition to its average price).⁶⁵ However, there is no regulatory or statutory requirement that the Department must compare the new shipper's sale price with the individual per-unit prices in the CBP entry data, particularly in cases where the CBP data does not provide an accurate match to the comparison merchandise.⁶⁶ The CBP data does not provide any information regarding product characteristics or specifications.⁶⁷ Senmao's sales provided a more accurate and similar product to serve as a point of comparison. Although Senmao was found to be dumping in AR2 *in the aggregate*, this fact alone does not demonstrate that Senmao's prices for all of its sales were dumped prices. Moreover, it is important to recognize that the Department's analysis in the context of a *bona fide* analysis is different than in a dumping analysis. In a *bona fide* analysis we are examining each sale for its commercial reasonableness, and are not attempting to ascertain the fair value of the merchandise.

⁶⁴ See Muyun's Third Supp. Response at Exhibit SQ3-2.

⁶⁵ See AR2 Data Memo.

⁶⁶ See, *e.g.*, Dept. Practice Memo at Attachment 1 and 2.

⁶⁷ See *BPI Discussion of Muyun's Comments*.

Senmao's Range of Prices

The Department disagrees with Muyun's claim that Senmao's range of prices is problematic. The extent to which market factors have an impact on Senmao's business practice in comparison to Muyun's cannot be determined because Muyun did not have any other sales in the U.S. market to be used as a point of comparison. As the CIT has emphasized, "in one sale reviews, there is, as a result of the seller's choice to make only one shipment, little data from which to infer what the shipper's future selling practices would look like."⁶⁸ The Department attempted to minimize any differences between the two companies by comparing Muyun's sale to Senmao's sales with similar terms and product quality. Beyond this, it is unknown what impact these "other relevant market factors {had} in the normal course of business." There is no record evidence indicating additional market factors had any impact on price. Furthermore, there is no record evidence that Senmao's sales data is unreliable or inaccurate. Finally, the Department requested not only a list of other purchases and suppliers of subject merchandise from Muyun's U.S. customer, but also evidence with supporting documentation, which the U.S. customer did not provide to the Department; because of this incomplete submission, there is no record evidence confirming the validity of Muyun's U.S. customer's additional purchases of subject merchandise. As such, Senmao's sales data provides the most accurate and appropriate comparison point on the record. Despite Senmao's range of prices, Muyun's single sale was still higher than any sale of comparable merchandise made by Senmao during AR2. For additional discussion on this point, see the *BPI Discussion of Muyun's Comments*.

CONNUM Match

The Department disagrees with Muyun that we should alter the approach we relied upon in the preliminary results. In its price comparison, the Department selected Senmao's product with a CONNUM that most closely matched Muyun's. As Muyun stated in its case brief, "{d}ifferences in the product characteristics meaningfully impact the quality and prices of the product,"⁶⁹ and with that, more differences in product characteristics lead to a greater difference between product quality, price, and comparability. The Department does not believe selecting another one of Senmao's products with less similar product characteristics would be appropriate or correct. In previous cases, the Department determined that when no sales of identical merchandise were available for comparison that the most similar merchandise based on CONNUM product characteristics would be used for comparison purposes.⁷⁰ Although this was an administrative review in which U.S. sales were being compared with home market sales, the reasoning stands that if there is not identical merchandise for comparison, the most similar merchandise based on product characteristics is appropriate.

Finally, the Department also disagrees additional characteristics not included in the CONNUM should be considered in the price. The Department has established in this antidumping

⁶⁸ See TTPC, 366 F. Supp. 2d at 1263.

⁶⁹ See Muyun's Brief at 11-12.

⁷⁰ See *Certain Welded Carbon Steel Pipe and Tube from Turkey; Notice of Preliminary Results of Antidumping Duty Administrative Review*; 76 FR 33204 (June 8, 2011), unchanged in *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011).

proceeding CONNUMs to determine comparable merchandise based on the physical characteristics that affect meaningful commercial differences.⁷¹ Muyun did not submit any record evidence to demonstrate that other physical characteristics affected the price of subject merchandise. Because the Department does not have any knowledge or record evidence of these additional characteristics and Muyun did not provide any kind of explanation of these characteristics during the questionnaire gathering stages of this administrative review, the impact of these characteristics are unknown and cannot be quantified for either Muyun's sale and Senmao's sales. For additional discussion on this point, *see the BPI Discussion of Muyun's Comments*.

Non-Contemporaneous Data

The Department disagrees that the AR2 data is not appropriate; while each proceeding stands on its own, when the Department relies on information from other segments, it generally relies only upon data and information from finalized proceedings to ensure that it is using accurate and fully-vetted data.⁷² The data from AR2 was from the most recently finalized segment and its selection was consistent with Department practice.

The Department also disagrees with Muyun regarding the use of its U.S. customer's purchase prices. As stated above the purchase data provided by Muyun's U.S. customer lacked the additional supporting documentation requested; as a result there is no record evidence that the data is more contemporaneous. Furthermore, there is no record evidence indicating the volatility of wood flooring pricing in the markets; as such the Department did not place undue weight onto price differences, but rather analyzed the totality of the circumstances. For additional discussion on this point, *see the BPI Discussion of Muyun's Comments*.

Comment 9: Whether the totality of the circumstances indicates that Muyun's sale was *bona fide*.

In the preliminary results of this NSR, the Department determined Muyun's single sale to be non-*bona fide*. Muyun argues that reasoning and explanations outlined above in combination with the totality of the circumstances should find Muyun's single sale to be *bona fide*.

Muyun's Comments:

- The bona fide analysis involves "consideration of the totality of the circumstances regarding the sale...the weight given to each factor investigated will depend on the circumstances surrounding the sale."⁷³ In the *Preliminary Results*, the Department analyzed all relevant factors determined three relevant factors may not be bona fide.

⁷¹ *See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (Oct. 18, 2011) and accompanying Issues and Decision Memorandum at 34-35 (describing the process through which the Department established CONNUMs in this proceeding).

⁷² *See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2013-2014*, 81 FR 39893 (June 20, 2015) and accompanying Issues and Decision Memorandum at Comment 2 (an example of where the Department cites to several final proceedings).

⁷³ *See* TTPC, 29 C.I.T. 256.

- Definite record evidence demonstrates that Muyun’s customer sold at a profit; there is also record evidence explaining the timing of Muyun’s sale.
- The Department compared Senmao’s sales from two years ago to Muyun’s sale. Muyun has presented information that explains this small difference: Senmao’s dumping margin and the higher quality product of Muyun’s sale.
- Additional contemporaneous sale information from multiple Chinese exporters is on the record from Muyun’s unaffiliated customer demonstrates that Muyun’s sale was at a normal price during and after the POR.
- The record does not support finding Muyun’s pricing atypical or not indicative of future sales. Muyun also submits that as the subject merchandise is not a commodity it is subject to greater variance in pricing and thus the pricing comparison should be given less weight. Senmao’s wide variances in price attest to this fact.
- Given the totality of the circumstances, the Department should find that Muyun’s sale was *bona fide*.

Department’s Position:

The Department disagrees with Muyun’s assertion that that Muyun’s sale should be found to be *bona fide*. The Department does agree that the record does provide evidence demonstrating Muyun’s customer sold a portion of the subject merchandise at a profit. However, as Muyun stated itself, the analysis must involve “consideration of the totality of the circumstances regarding the sale...the weight given to each factor investigated will depend on the circumstances surrounding the sale.”⁷⁴ As stated above, the Department does not agree with Muyun’s explanation regarding their higher price in comparison with Senmao’s. The Department finds that Senmao’s sales information from AR2 was the most recently completed segment and that the comparison merchandise matched the subject merchandise on numerous product characteristics. Additionally, as stated above, in one sale reviews, little information can be obtained regarding the seller’s future selling practices; and, as such, Muyun’s single sale at a higher price for nearly identical merchandise calls into question whether this sale is representative of Muyun’s future selling practices. Furthermore, the Department does consider the timing of a customer’s payment a factor in a *bona fide* analysis.⁷⁵ In this instant case, record evidence shows that Muyun had an abnormally high price and in combination with the customer’s late payment, the Department continues to find Muyun’s single sale to be non-*bona fide*. For additional discussion on this point, see the *BPI Discussion of Muyun’s Comments*.

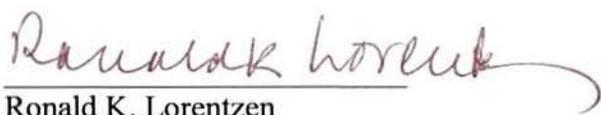
⁷⁴ *Id.*

⁷⁵ See TTPC, 366 F. Supp. 2d at 1258-1262.

RECOMMENDATION

Based on our analysis of the comments received and the factors described above, we recommend continuing to find that Zhangshi's single sale and Muyun's single sale were not *bona fide*, and we recommend rescinding these NSRs. If accepted, we will publish the rescission of these reviews in the *Federal Register*.

AGREE DISAGREE



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

October 17, 2016
Date