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December 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Preserved Mushrooms from the People's Republic of China: Issues and Decision Memorandum for Final Rescission

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SUMMARY

The Department of Commerce (the Department) has analyzed the comments submitted by the respondent, Linyi Yuqiao International Trade Co., Ltd. (Yuqiao), in the new shipper review (NSR) of certain preserved mushrooms from the People's Republic of China (PRC). Based on our analysis of the comments received, we have made no changes to our *Preliminary Rescission* and continue to find that Yuqiao's single sale during the period of review (POR) was not *bona fide* and that it is appropriate to rescind the NSR of Yuqiao.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

[1] *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Rescission of the 2015 Antidumping Duty New Shipper Review* 81 FR 52403 (August 8, 2016) (*Preliminary Rescission*); *see also* Memorandum from Michael J. Heaney to Scot Fullerton Re: 2015 Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Preliminary *Bona Fide* Sales Analysis for Linyi Yuqiao International Trade Co., Ltd. dated August 2, 2016 (Preliminary *Bona Fide* Sales Memorandum).

BACKGROUND

On August 8, 2016, the Department published the *Preliminary Rescission* in the *Federal Register*.[2] On September 7, 2016, the Department received a case brief from Yuqiao.[3] No parties submitted rebuttal briefs. On December 2, 2016, the Department held an *ex parte* meeting with counsel for Yuqiao.[4]

On October 21, 2016, the Department extended the deadline for issuing the final results by 45 days.[5] Additionally, on December 15, 2016, the Department extended the deadline for issuing the final results by an additional 15 days.[6] The revised deadline for issuing the final results of this review is now December 30, 2016.

SCOPE OF THE ORDER

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[7]

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[2] *See Preliminary Rescission*.
[3] *See* Letter from Linyi Yuqiao International Trade Co., Ltd. Re: Certain Preserved Mushrooms from the People's Republic of China; Yuqiao's Comments on the Department's Preliminary Rescission, dated September 7, 2016 (Yuqiao Case Brief).
[4] *See* Memorandum from Michael J. Heaney to the File Re: Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Ex Parte Meeting with Counsel to Linyi Yuqiao International Trade Co., Ltd.
[5] *See* Memorandum dated October 21, 2016 from Michael J. Heaney to Christian Marsh Re: Certain Preserved Mushrooms from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty New Shipper Review.
[6] *See* Memorandum dated December 15, 2016 from Michael J. Heaney to Christian Marsh Re: Certain Preserved Mushrooms from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty New Shipper Review.
[7] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat v. United States*, 396 F.3d 1378 (Fed. Cir. 2005).

Excluded from the scope of this order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms;" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

DISCUSSION OF THE ISSUES

This memorandum addresses the following arguments that Yuqiao raised in comments submitted after the *Preliminary Rescission*:

Comment 1: Whether the Department Properly Weighed the *Bona Fide* Criteria Established Under Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as Amended (The Act)
Comment 2: Analysis of Sales Quantity, Price, Timing, and Payment of Yuqiao's Sale
Comment 3: Analysis of the Behavior of Yuqiao, Yuqiao's Importer, and Yuqiao's Supplier

Comment 1: Whether the Department Properly Weighed the *Bona Fide* Criteria Established Under Section 751(a)(2)(B)(iv) of the Act

Yuqiao argues that most of the statutory criteria set forth under section 751(a)(2)(B)(iv) of the Act establish its U.S. transaction to be *bona fide*.[8] Citing *New Donghua*, Yuqiao states that the Department's practice is to consider on a case-by-case basis whether a transaction is "commercially unreasonable" or "atypical of business practices."[9] Yuqiao argues that the Department properly found that many of the statutory criteria indicated that Yuqiao's sale was *bona fide*. In particular, Yuqiao argues that consideration of the sale price, sale quantity, and expenses associated with the sale establish that this sale is *bona fide*.[10] Yuqiao further argues that Yuqiao's importer having made the sale at a profit[11] and at arm's length,[12] further establish its sale to be *bona fide*.

[8] *See* Yuqiao Case Brief at 4.
[9] *Id.,* at 2, citing *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (*New Donghua*).
[10] *Id.,* at 5.
[11] *Id.,* at 6.
[12] *Id.*

Yuqiao asserts that the Preliminary *Bona Fide* Sales Memorandum found Yuqiao's sale to be non *bona fide* because the Department incorrectly analyzed other factors (*e.g.*, timing of sale, lateness of payment, commercial behavior of Yuqiao and its importer).[13] Yuqiao argues that in the Preliminary *Bona Fide* Sales Memorandum, the Department placed excessive emphasis upon these other factors while insufficiently considering the statutory factors that support Yuqiao's sale being *bona fide*.[14] Citing *Atlantic Sugar*, Yuqiao asserts that the Department is required to consider the record as a whole, including evidence that detracts from its conclusions.[15]

Department's Position:

In these final results, we continue to find Yuqiao's single U.S. sale during the POR to be non-*bona fide*. Section 751(a)(2)(B)(iv) of the Act requires that any weighted average dumping margins determined in a NSR be based "solely on the bona fide United States sales of" the exporter or producer under consideration. To evaluate whether the sale or sales under consideration are *bona fide*, section 751(a)(2)(B)(iv) of the Act directs the Department to consider, depending on the circumstances:

> (I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.

As a result, section 751(a)(2)(B)(iv) of the Act requires an affirmative determination that a sale is *bona fide* before it can be reviewed. Further, where a review is based on a single sale, exclusion of that sale as non-*bona fide* necessarily must end the review.[16]

As we explained in our Preliminary *Bona Fide* Sales Memorandum:

> The goal of our *bona fide* sales analysis in a NSR is to ensure that the U.S. price used in the dumping calculation is realistic and indicative of prices at which the respondent will sell the product in the future. Otherwise, the respondent may benefit from obtaining a low dumping margin based on an atypical price that does not reflect the respondent's usual commercial practices.[17]

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[13] *Id.* at 6-7.
[14] *Id.*
[15] *Id.* at 7, citing *Atlantic Sugar, Ltd. v. United States*, 774 F2d 1556 1562 (Fed. Cir. 1984).
[16] *See Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (*TTPC*).
[17] *See* Preliminary *Bona Fide* Sales Memorandum at 3.

In *TTPC*, the Court of International Trade (CIT) found that any factor indicating that a sale under consideration is not likely to be typical of those that the exporter/producer will make in the future is relevant, and the weight given to each factor investigated will depend on the circumstances surrounding the sale.[18]

In the Preliminary *Bona Fide* Sales Memorandum, we based our *bona fides* analysis on the totality of the circumstances surrounding Yuqiao's single U.S. sale.[19] We disagree that this analysis failed to account for certain evidence. Rather, as Yuqiao observes, the Department found that certain aspects of Yuqiao's single sale did not appear to be atypical.[20] However, when weighed against the totality of the circumstances surrounding the sale, the Department found that these aspects were insufficient to overcome other factors casting doubt on the *bona fide* nature of the sale. In our analysis of each of these case-specific factors, we properly considered whether Yuqiao's single sale reflects normal commercial considerations or is likely to be typical of Yuqiao's future sales behavior.[21]

For these final results, we continue to base our *bona fides* analysis on the totality of the circumstances surrounding Yuqiao's single U.S. sale, as analyzed in the Preliminary *Bona Fide* Sales Memorandum and further in these Comments. As discussed in our response to Comments 2 and 3 below, we continue to find that the Department's examination of the sales quantity, price, timing, and payment of Yuqiao's sale, as well as the atypical behavior of parties in the Yuqiao sales transaction chain, was proper under section 751(a)(2)(B)(iv) of the Act. In particular, we find that certain aspects of Yuqiao's single U.S. sale reflect atypical business behavior on the part of Yuqiao, Yuqiao's supplier, and Yuqiao's importer.[22] We also find that the timing and other aspects of the sale, and the behavior of each of the parties involved in this transaction support continuing to find Yuqiao's single U.S. sale to be *non-bona fide.*

In so concluding, we note that we disagree with Yuqiao's assertions that the Department found that "most aspects of Yuqiao's U.S. sale under the statute were fully indicative under the statutory criteria of a *bona fide* transaction."[23] Although Yuqiao is correct, for example, that the Department preliminarily found that the average unit price and quantity of Yuqiao's sale did not appear atypical, the Department found *other* considerations to be atypical under the umbrella of price and quantity.[24] Therefore, the Department did not, as Yuqiao suggests, conclude that an examination of section 751(a)(2)(B)(iv)(I) and (II) of the Act was "indicative of a *bona fide*

[18] *See TTPC*, 366 F. Supp. 2d at 1250, 1263.
[19] *See* Preliminary *Bona Fide* Sales Memorandum for a discussion of the factors outlined in section 751(a)(2)(B)(iv) of the Act.
[20] *See generally* Preliminary *Bona Fide* Sales Memorandum.
[21] *See New Donghua*, 374 F. Supp. 2d at 1342 (noting that the *bona fides* analysis is intended "to assess whether the sale(s) under review are indicative of future commercial behavior").
[22] *See* Preliminary *Bona Fide* Sales Memorandum at 8.
[23] Yuqiao Case Brief at 4.
[24] *See* Preliminary *Bona Fide* Sales Memorandum at 3-4.

sale."[25] In any event, section 751(a)(2)(B)(iv)(VII) directs the Department to consider *any* other factor that the Department determines to be relevant to the question of whether the sale under review is likely to be typical of Yuqiao's future sales behavior in the United States.[26] Therefore, even if certain aspects of Yuqiao's sale do not appear atypical, the Department has the authority (and indeed the obligation) under the statute to consider all relevant factors.

Comment 2: Analysis of Sales Quantity, Price, Timing, and Payment of Yuqiao's Sale

Yuqiao argues that the Department properly found that Yuqiao's sales quantity was not atypical when measured on an average unit basis. Yuqiao argues that the Department's subsequent comparison of its overall export quantity to the aggregate quantity of all other Chinese exports is not the Department's "normal methodology for sales comparisons."[27] Yuqiao notes that the Department found in the Preliminary *Bona Fide* Sales Memorandum that the fact that Yuqiao made only a single sale does not, in itself, establish that Yuqiao's sale is commercially unreasonable.[28] Additionally, with regard to the sales quantity, Yuqiao argues that since its shipments are subject to a 308.33 percent antidumping duty deposit rate, "transacting a substantially larger sales quantity would be a commercially unreasonable undertaking."[29]

With respect to the Department's analysis of pricing, Yuqiao further contends that the Department misconstrued the statement from Yuqiao's importer that "the price quote could be higher given the small quantity." First, Yuqiao argues that the price ultimately paid by the importer was not in fact higher than the average unit value of other sales.[30] Additionally, Yuqiao argues that it is a common business practice to discount for larger volume transactions and to pay a higher price for merchandise sold in smaller transaction quantities.[31]

Yuqiao further asserts that there is nothing atypical in the timing of its sale. Yuqiao argues that "the sale was contemplated and executed well in advance of the new shipper POR."[32] Yuqiao also argues that while the merchandise entered the U.S. on the last date of the POR (July 31, 2015), negotiations began between the parties on May 19, 2015, and the bill of lading for this transaction was issued on July 2, 2015.[33] In this regard, Yuqiao argues that the instant case stands "in stark contrast" to *Cut to Length Plate from Romania*, wherein the merchandise was entered via air freight (rather than ocean freight) just prior to the close of the POR.[34] Yuqiao

[25] *See* Yuqiao Case Brief at 4-5.
[26] *See also TTPC*, 366 F. Supp. 2d at 1250.
[27] *See* Yuqiao Case Brief at 8.
[28] *Id*., citing Preliminary *Bona Fide* Sales Memorandum at 8.
[29] *Id.*
[30] *Id*.
[31] *Id*., citing 19 CFR 351.409(a).
[32] *Id.,* at 9.
[33] *Id*.
[34] *Id.,* at 10, citing *Cut to Length Carbon Steel Plate from Romania: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 47232 (September 24, 1988) (*Cut to Length Plate from Romania*).

further argues that entry of the sale on last date of the POR is fully compliant with section 351.214(f)(2)(i) of the Department's regulations, and notes that section 351.214(f)(2)(ii) of the Department's regulations permits expanding the POR to accommodate merchandise that enters the United States after the end of the NSR POR.[35]

Regarding the timing of the payment Yuqiao received on the sale, Yuqiao contends that late payment and the fact that it received payment from its importer past the payment due date is consistent with "commercial reality."[36] Citing to *Flat Products from Korea*, Yuqiao contends that "it is not unusual for respondents in dumping cases to receive late payments and not to receive recompense for such late payment."[37] Finally, Yuqiao argues that the instant case is differentiable from *TTPC*, which the Department cited in its Preliminary *Bona Fide* Sales Memorandum.[38] Yuqiao argues that in *TTPC*, payment was made nine months past due whereas here the importer was only 61 days past due.[39]

Department's Position:

As previously noted, in determining Yuqiao's single U.S. sale to be non-*bona fide*, we considered the factors that are enumerated in section 751(a)(2)(B)(iv) of the Act, which as Yuqiao notes include price and quantity, timing, and expenses arising from the sale(s). In these final results, we continue to find aspects of the quantity, price, and timing of Yuqiao's single U.S. sale, as well as the late payment associated with Yuqiao's single U.S. sale, to be suggestive of atypical business behavior and to weigh against, in combination with our analysis of other factors, finding Yuqiao's sale *bona fide*, as detailed below.

Section 751(a)(2)(B)(iv)(VII) of the Act instructs the Department to consider any other factor the Department finds relevant. In this case, we have considered other factors, including those relating to Yuqiao's aggregate quantity and overall sales chain. With respect to quantity, we continue to find that the aggregate quantity associated with Yuqiao's imports of mushrooms is atypical when viewed in light of the total aggregate quantity imported by the other importer of subject merchandise during the POR. As we explained in the Preliminary *Bona Fides* Sales Memorandum, one exporter and one importer accounted for *all* entries of subject merchandise during the POR, other than the sale at issue in this NSR.[40] Furthermore, when considered against the totality of the circumstances in this NSR, we find that the single sale by an exporter and

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[35] *Id*.
[36] *Id.,* at 10-11.
[37] *Id.,* at 11, citing *Certain Cold Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12929 (March 16, 1999) (*Flat Products from Korea*).
[38] *Id.,* at 11-12, citing *TTPC*, 366 F. Supp. 2d at 1249.
[39] *Id.,* at 11-12.
[40] The discussion of import volumes involves proprietary data. *See* Preliminary *Bona Fide* Sales Memorandum at 3-4 and Attachment 1 for further discussion of this analysis, which remains unchanged for these final results of review.

importer with no prior experience in the market is unusual. This is especially important in a NSR that is based on only one sale, where there is "little data from which to infer what the shipper's future selling practices would look like."[41] Thus, although not dispositive to the Department's finding, we continue to find the atypical sales chain, along with the quantity at issue, relevant to the Department's *bona fide* analysis. Finally, with regard to Yuqiao's argument that the Department's analysis of quantity is different from that typically employed by the Department in a *bona fide* analysis, we note that even if that is the case, section 751(a)(2)(B)(iv)(VII) of the Act instructs the Department to consider any other factor the Department finds relevant. Given the nature of the other entries of the subject merchandise during the POR, including the typical aggregate quantity and sales chain, we continue to find the aggregate quantity and sales chain analysis relevant to the *bona fide* analysis in this case.

Furthermore, with respect to price, we disagree that the U.S. importer's statements during price negotiations are irrelevant. As we noted in the Preliminary *Bona Fide* Sales Memorandum, Yuqiao's U.S. importer requested a price quote for a sale of subject merchandise, in which the importer stated that the "quote can be a bit higher given the small quantity."[42] Yuqiao argues that this fact is irrelevant because the "price ultimately paid was not higher than the AUV of other POR sales," and it is not commercially unreasonable to pay more for a lower quantity of merchandise.[43] But these arguments lose sight of the Department's concern when citing this language, which is that the parties were willing to contemplate different prices for the sale in this NSR than these parties would typically agree to under normal circumstances. This "calls into question whether the quoted price and quantity are likely to reflect Yuqiao's commercial behavior under normal commercial conditions."[44] As the CIT found in *TPCC*, "because the ultimate goal of the new shipper review is to ensure that the U.S. price side of the antidumping calculation is based on a realistic figure, any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant."[45] Further, reviews based on a single sale must be "carefully scrutinized to ensure that new shippers do not unfairly benefit from unrepresentative sales."[46] Thus, we continue to find that the facts on the record relating to the quantity and price of Yuqiao's single U.S. sale, including the correspondence between Yuqiao and its importer, are suggestive of atypical business behavior notwithstanding that the average unit price and quantity for the sale are otherwise within the range of other entries of subject merchandise during the POR.

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[41] *TTPC*, 366 F. Supp. 2d at 1263.
[42] *See* Preliminary *Bona Fide* Sales Memorandum at 4 (quoting November 3, 2016 Yuqiao Section A Response at Exhibit 5).
[43] Yuqiao Case Brief at 4.
[44] *See* Preliminary *Bona Fide* Sales Memorandum at 4.
[45] *See TPCC*, 366 F. Supp. 2d at 1250; *see also Shandong Chenhe Int'l Trading Co. v. United States*, 34 CIT 1472, 1479 (CIT 2010) (finding that the size of a sale "can raise questions as whether the purchaser would buy the merchandise in the future at the same quantity at the same price," and that this is relevant to a *bona fides* analysis).
[46] *See TTPC*, 366 F. Supp. 2d at 1263.

With respect to the timing of sales transactions, the Department has previously considered the timing of the sale as an indicator of whether the sale is *bona fide*. For example, in *Photovoltaric Cells*, the Department identified the "timing of events surrounding the sale" as an indication of whether a sale may be a non-commercial transaction.[47] As in *Photovoltaic Cells*, we similarly find the timing of Yuqiao's NSR sale, as well as the absence of prior or subsequent business activity of Yuqiao's importer (beyond the single sale that comprises this NSR), to be indicative of Yuqiao having consummated the sale for purposes of obtaining a NSR, rather than solely out of normal commercial considerations. Specifically, while Yuqiao argues that sales negotiations began in May 2015, we find that both the bill of lading date and the U.S. entry date occurred in the last month of the POR, which suggests that Yuqiao timed the sale to occur before the end of the POR for the purpose of obtaining a NSR. Although not dispositive, we find that this fact is relevant to evaluating the totality of the circumstances surrounding Yuqiao's single U.S. sale.

Finally, with regard to the timing of Yuqiao's receipt of payment from its importer, we continue to find that the fact that Yuqiao received payment well past the agreed-upon payment date between Yuqiao and its importer calls into doubt the *bona fide* nature of the sale.[48] Yuqiao has attempted to distinguish its situation from that of the importer in *TTPC* because Yuqiao's importer remitted payment in a less untimely manner than did the importer discussed in *TTPC*.[49] However, the fact remains that Yuqiao's importer paid significantly later than was called for by the terms of the sales contract, which is relevant in considering the totality of the circumstances surrounding the transaction(s) at issue.[50] Although Yuqiao argues that late payment is a "quite common, if not expected, event," we note that Yuqiao cites only *Flat Products from Korea* for this proposition. However, the discussion cited by Yuqiao in *Flat Products from Korea* concerned one company's explanation of its own commercial practices; the Department did not make a broad finding that late payment is a common or expected occurrence.[51] Further, Yuqiao has not cited any evidence reflecting that its normal commercial practice is to habitually accept significantly late payments. Based upon the foregoing, in these final results, we continue to find the tardiness of Yuqiao's importer in remitting payment, when considered along with other atypical aspects of the sale, is a factor which indicates that Yuqiao's sale is not *bona fide*.

Comment 3: Analysis of the Behavior of Yuqiao, Yuqiao's Importer, and Yuqiao's Supplier

Yuqiao argues that the Department improperly accorded weight to the fact that the U.S. importer experienced a significant delay in reselling the subject merchandise that it purchased from

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[47] *See* Crystalline Silicon Photovoltaic Cells, Whether or not Assembled Into Modules, from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review; 2013-2014, 80 FR 55090 (September 14, 2015) and Accompanying Issues and Decision Memorandum at 15 (*Photovoltaic Cells*).
[48] *See* Preliminary *Bona Fide* Sales Memorandum at 5.
[49] *See* Yuqiao Case Brief at 10-12.
[50] *See TTPC*, 366 F. Supp. 2d at 1260-61.
[51] *See Flat Products From Korea*, 64 FR at 12930.

Yuqiao. Yuqiao argues that *New Donghua*, the case that the Department cited to support its determination, concerned facts that are distinguishable from the circumstances at issue in this review.[52] Yuqiao asserts that in *New Donghua*, the importer had neither experience in selling the subject merchandise (glycine), nor prior involvement in the chemical industry in general.[53] However, Yuqiao contends that Yuqiao's U.S. importer's business relates to canned and jar fruit, which Yuqiao argues represents a similar business to the importation of preserved mushrooms.[54] Yuqiao also asserts that the "baby corn, bamboo shoots and straw mushrooms" previously sold by its U.S. importer represent "an extension of {the} importer's product line."[55] Additionally, Yuqiao asserts that the instant case is distinguishable from *New Donghua*, in that unlike the circumstances in *New Donghua*, Yuqiao's U.S. importer resold the merchandise to one of its existing customers, and Yuqiao's importer earned a profit on the transaction.[56] Yuqiao also argues that unlike *New Donghua*, Yuqiao's importer resold the merchandise in a more timely manner (*i.e.*, January 20, 2016, which is 10 months prior to the likely final determination in this review).[57]

Yuqiao further argues that the Department's analysis of other relevant factors under section 751(a)(2)(B)(iv)(VII) of the Act was unsupported by evidence or administrative or judicial precedent. In particular, Yuqiao first asserts that, contrary to the conclusion reached in the Preliminary *Bona Fide* Sales Memorandum, its supplier (Linyi City Kangfa Drinkable Co., Ltd. (Kangfa)) acted in a commercially rational manner. Yuqiao argues that by participating in this review, "Kangfa is acting in its own best commercial interests because it is now subject to a 308.33% antidumping duty margin from the 2013-2014 review, which became effective on March 16, 2016." Because "Kangfa is . . . effectively excluded from exporting preserved mushrooms" directly to the United States, Yuqiao contends that it is in Kangfa's interest to work in "conjunction with Yuqiao to secure a low antidumping duty margin to enable Yuqiao to export subject merchandise manufactured by Kangfa."[58]

Second, Yuqiao also argues that the Preliminary *Bona Fide* Sales Memorandum erroneously assigned probative weight to Yuqiao's failure to previously sell the subject merchandise in the United States. Yuqiao argues that as an initial matter, had Yuqiao previously sold subject merchandise prior to the onset of the NSR, it would be ineligible for a NSR.[59] Yuqiao further argues that it was unable to find exporter/supplier not subject to 308.33 percent rate (the rate

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[52] *See* Yuqiao Case Brief at 12-13.
[53] *Id*., citing *New Donghua*, 374 F. Supp. 2d at 1343.
[54] *Id*.
[55] *Id*.
[56] *Id.,* at 13.
[57] *Id*.
[58] *Id.,* at 14.
[59] *Id.,* at 15.

currently assigned to the PRC-wide entity), thus requiring Yuqiao to purchase and export mushrooms in a small quantity.[60]

Finally, Yuqiao contends that the Department also erroneously found that the U.S. importer's behavior was atypical because it had not previously purchased the subject merchandise from either China or any third country market. Yuqiao argues that the importer's "business model" was to sell Chinese products rather than merchandise from third country markets, and that the U.S. importer was seeking to expand its product line.[61]

Department's Position:

In these final results, we continue to find that Yuqiao, Yuqiao's importer, and Kangfa (Yuqiao's supplier) acted in a manner that appears contrary to normal commercial considerations and casts doubt on whether the sale is likely to represent future commercial behavior. As an initial matter, as noted in the Preliminary *Bona Fide* Sales Memorandum, Yuqiao has made no sales either to the United States or to third country markets of the subject merchandise beyond the single sale which is the subject of this NSR.[62] Yuqiao argues that it was unable to make subsequent sales to the United States because of the high cash deposit rate in effect for its entries. But that does not address the Department's finding that Yuqiao also had no third country sales beyond that which is the subject of this NSR. Furthermore, regardless of Yuqiao's motivations, the fact remains that there is only one sale for the Department to analyze in this NSR. The single sale made by Yuqiao limits the available data which can be used as a point of comparison to determine the *bona fide* nature of the sale. 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."[63] As a result, the Department must look carefully at the single sale in conducting its *bona fide* sales analysis. That is what the Department has done in this NSR.

With respect to the behavior of Yuqiao's U.S. importer, as we noted in the Preliminary *Bona Fide* Sales Memorandum, in our *bona fide* analysis, we considered whether Yuqiao's sale was made at a profit.[64] While we did find the sale to be made at a small profit, we continue to find that the record reflects other atypical behavior on the part of Yuqiao's U.S. importer. As an

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[60] *Id*.
[61] *Id*.
[62] *See* Preliminary *Bona Fide* Sales Memorandum at 8 (citing Letter from Linyi City Yuqiao to Secretary of Commerce Re: Certain Preserved Mushrooms from China; Section A Response of Linyi Yuqiao International Trade Co., Ltd., dated November 3, 2015 (November 3, 2015 Yuqiao Section A Response) at 16; Letter from Linyi City Yuqiao to Secretary of Commerce Re: Certain Preserved Mushrooms from China; Supplemental Response of Linyi Yuqiao International Trade Co., Ltd. dated February 1, 2016, at 2).
[63] *See TTPC*, 366 F. Supp. 2d at 1263; *see also Multilayered Wood Flooring from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2014-2015*, 81 FR 74393 (October 26, 2016), and accompanying Issues and Decision Memorandum at Comment 8.
[64] *See* Preliminary *Bona Fide* Sales Memorandum at 3-4 (Yuqiao line item transaction quantity) and at 6 (Whether Yuqiao's importer made a profit on the transaction).

initial matter, we continue to find it atypical that Yuqiao's importer contracted for a sale of subject merchandise with no immediate resale prospects, and no prior experience selling subject merchandise. We do not find that any factual distinctions with respect to the importer in *New Donghua* undermine our findings in this regard. Furthermore, in these final results, and as we also noted in the Preliminary *Bona Fide* Memorandum, we also continue to find it atypical of normal commercial practices that Yuqiao's U.S. importer preemptively stated that it was willing to accept a higher price than Yuqiao would normally charge.[65] Finally, we continue to find it relevant that beyond the single purchase that Yuqiao's importer made from Yuqiao, Yuqiao's importer has made no further purchases of the subject merchandise from either third country markets or the United States.[66] Although single sales are not inherently commercial unreasonable, as noted above, one sale reviews leave little data from which the Department can infer future selling practices. The information that we do have regarding the single sale in this NSR casts doubt on whether the transaction is likely to reflect commercial behavior.

With respect to the behavior of Yuqiao's supplier (Kangfa), we continue to find Kanga's behavior atypical and unrepresentative of normal commercial practices. As noted in *Fish Fillets from Vietnam,* in previous cases, the Department has considered a competitor's effort to assist a NSR applicant in obtaining an individual rate as a factor which calls into question the *bona fide* nature of the single reported sale.[67] We find the situation in the instant case to be similar to that in *Fresh Fish Fillets from Vietnam*. As we noted in the Preliminary *Bona Fide* Sales Memorandum, in the *2013-2014 Review*, we calculated a 75.67 percent rate for Yuqiao's supplier, Kangfa.[68] However, in the subsequent *2014-2015 Review*, Kangfa (who was also the sole mandatory respondent selected for the 2014-2015 review) declined to participate in the review and was, therefore, determined to be a part of the PRC-wide entity.[69] As part of the PRC-wide entity, Kangfa's shipments are now subject to cash deposits of 308.33 percent.[70] Thus, we continue to find that as a competitor to Yuqiao in the U.S. market, it is atypical that Kangfa would assist Yuqiao by participating in a NSR that would establish a cash deposit rate for Yuqiao that is potentially far lower than the PRC-wide entity rate that currently governs

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[65] *See* Preliminary *Bona Fide* Sales Memorandum at 8.
[66] *Id.*; *see also* Letter from Linyi City Yuqiao to Secretary of Commerce Re: Certain Preserved Mushrooms from China; Supplemental Response of Linyi Yuqiao International Trade Co., Ltd., dated February 1, 2016 at 2.
[67] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Review*, 79 FR 71748 (December 3, 2014) (*Fish Fillets from Vietnam*), and accompanying Issues and Decision Memorandum at 5; *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 Review*,72 FR 52049 (September 12, 2007) (*Warmwater Shrimp from the PRC*), and accompanying Issues and Decision Memorandum at Comment 17B.
[68] *See* Preliminary *Bona Fide* Sales Memorandum at 7, citing *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 80 FR 32355 (June 8, 2015) (*2013-2014 Review*).
[69] *Id*; *see also Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 12692 (March 10, 2016) (*2014-2015 Review*).
[70] *See 2014-2015 Review*.

Kangfa's shipments.[71] Moreover, as we also indicated in the Preliminary *Bona Fide* Sales Memorandum, this "unusual circumstance" is magnified by Kangfa's cooperation in this review, which followed Kanga having affirmatively withdrawn from the *2014-2015 Review* and resulted in Kangfa's shipments being subject to a 308.33 percent cash deposit rate.[72]

Yuqiao argues that Kangfa is not actually in competition with Yuqiao, because Kangfa is currently subject to a cash deposit rate of 308.33 percent and is effectively excluded from the market. Under these circumstances, Yuqiao argues that it is not atypical for Kangfa to work "in conjunction with Yuqiao to secure a low antidumping margin to enable Yuqiao to export subject merchandise manufactured by Kangfa."[73] We disagree. Yuqiao's assertions disregard that Kangfa is able to request a review of its exports on an annual basis, which could potentially result in a revision to Kangfa's cash deposit rate moving forward[74] and might enable Kangfa to regain any lost market share. Thus, we continue to find that it is atypical for Kangfa to assist a competitor in the U.S. market in securing a lower cash deposit rate.

Further, Yuqiao's assertions fail to account for the fact that Kangfa's cash deposit rate is set at 308.33 percent because Kangfa affirmatively withdrew from the *2014-2015* review and shortly thereafter began participating in this NSR. Based on the foregoing, we continue to find it unusual commercial behavior for a company to voluntarily withdraw its participation in an administrative review, only to subsequently help a competitor.

Finally, and more fundamentally, Yuqiao appears to concede that this new shipper review was requested so that Yuqiao could "secure a low antidumping duty margin," through which Kangfa could avoid the current high cash deposit rate applicable to its exports.[75] While this may be in Kangfa's commercial interest, this is plainly not the purpose of a NSR and casts significant doubt on the *bona fide* nature of the transaction at issue in this NSR and whether this sales transaction is likely to reflect future sales behavior. As we have stated, "the Department examines the involvement of each of the parties in the transaction in order to determine whether the sale was in fact completed by the new shipper under review, or was in fact made by a previous participant in an antidumping review or investigation, who would otherwise be ineligible to participate in a

[71] *See* Preliminary *Bona Fide* Sales Memorandum at 7.
[72] *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Rescission in Part; 2014/2015*, 80 FR 68836 (November 6, 2015) (noting that Kangfa withdrew from participation in the review on July 6, 2015).
[73] *See* Yuqiao Case Brief at 14.
[74] *See generally* section 751(a) of the Act (providing for periodic review of antidumping duties); section 751(a)(2)(C) of the Act (providing that a determination under section 751(a) of the Act provides the basis for cash deposit rates).
[75] *See* Yuqiao Case Brief at 14.

new shipper review."[76] The unusual circumstances surrounding Kangfa's participation in this review is relevant to this inquiry.

Therefore, we disagree with Yuqiao, and we continue to find that Yuqiao, Yuqiao's importer, and Yuqiao's supplier (Kangfa) acted in a manner that is atypical and not reflective of normal commercial business practices. And because the behavior of all parties in the transaction is relevant to the Department's *bona fides* analysis, we continue to accord weight to these factors in analyzing the totality of the circumstances.

RECOMMENDATION

Based on our analysis of the comments received, we recommend rescinding the new shipper review, and publishing the final rescission in the *Federal Register.*

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Agree Disagree

12/29/2016

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Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
For Enforcement and Compliance

[76] *See Fish Fillets from Vietnam*, 79 FR 71748, and accompanying Issues and Decision Memorandum at 5; *see also Warmwater Shrimp from the PRC*, 72 FR 52049, and accompanying Issues and Decision Memorandum at Comment 17B.