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DATE: January 10, 2017

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review and Rescission of New Shipper Review (2014-2015): Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

Summary

We analyzed the case and rebuttal briefs of interested parties in the 2014-2015 administrative review and the new shipper review (NSR) of the antidumping duty order covering tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). We made no changes to the margin calculation from the Preliminary Results.[1] For the NSR, we continue to find the single sale to the United States made by Shandong Bolong Bearing Co. Ltd. (Bolong) to be non-bona fide. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

Changshan Peer Bearing Co., Ltd. and Peer Bearing Company (CPZ/SKF)

1. Surrogate Value (SV) for Truck Freight

Yantai CMC General Bearing Company (Yantai CMC)

2. The Department Should Grant Yantai CMC a Separate Rate
3. The Denial of Separate Rate Status for Yantai CMC is not Supported by Record Evidence
4. The Rate Assigned to Yantai CMC

[1] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015, 81 FR 45455 (July 14, 2016) (Preliminary Results), and accompanying Preliminary Decision Memorandum (TRBs Preliminary Decision Memo).

5. The Department's Separate Rates Test and the Rate Assigned to Yantai CMC Are Inconsistent with the WTO Agreements

NSR

6. The Department Should Continue the NSR and Calculate a Margin for the Final

Background

On July 14, 2016, the Department published the Preliminary Results of the 2014-2015 administrative review and NSR of the antidumping duty order on TRBs from the PRC. The final results of the administrative review cover four exporters,[2] of which the Department selected two as mandatory respondents for individual examination (i.e., CPZ/SKF and Yantai CMC). The NSR covers subject merchandise produced and exported by Bolong. The period of review (POR) is June 1, 2014, through May 31, 2015.[3]

We invited parties to comment on the Preliminary Results. In August 2016, we received case briefs from The Timken Company (the petitioner), Yantai CMC, and Bolong. In September 2016, we also received rebuttal briefs from the petitioner and CPZ/SKF. On October 6, 2016, the Department held a public hearing in the administrative review at the request of the petitioner.

After analyzing the comments received, we made no changes to the margin calculations for CPZ/SKF. We also continue to find that Yantai CMC is not eligible for a separate rate and that Bolong's sale is not bona fide. For CPZ/SKF, we continued to calculate constructed export price and normal value (NV) using the same methodology stated in the Preliminary Results.

Scope of the Order

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

[2] These companies are: 1) CPZ/SKF; 2) Haining Nice Flourish Auto Parts Co., Ltd.; 3) Roci International (HK) Limited; and 4) Yantai CMC.

[3] See 19 CFR 351.213(e)(1)(i) and 19 CFR 351.214(g)(1)(i).

Discussion of the Issues

Comment 1: *SV for Truck Freight*

In the Preliminary Results, the Department valued truck freight using data from a World Bank survey, published in Doing Business in Thailand: 2016 (Doing Business 2016).[4] The petitioner argues that, for the final results, the Department should rely instead on the same publication from the previous year (i.e., Doing Business in Thailand: 2015 (Doing Business 2015)). Although Doing Business 2016 does not identify the mode of transportation used for the basis of the freight rate, the petitioner asserts that it is based on rail, not truck freight.

The petitioner bases its conclusion on the following factors: 1) the World Bank describes the mode of transportation as "the one most widely used for the chosen export or import product;"[5] 2) the port in question is Laem Chabang, a container depot servicing transportation by both rail or truck;[6] 3) the value in Doing Business 2016 is six times smaller than the amount originally proposed by the respondents in this review based on Doing Business 2015, and seven times smaller than the rate used in the prior administrative review; and 4) the transport speed is 52.9 km/hour, notwithstanding the heavy traffic congestion of Bangkok and the fact that speeds in Southeast Asian countries in other World Bank 2016 reports are significantly slower (i.e., three to 13.5 km/hour).[7] Thus, the petitioner requests that the Department base the SV for truck freight on data in Doing Business 2015.

CPZ/SKF argues that the Department should continue to use the inland freight SV used in the Preliminary Results. According to CPZ/SKF, the petitioner's arguments ignore record evidence that supports the conclusion that the SV is for truck freight, including: 1) the methodology used to calculate the rate in Doing Business 2016 is based on a longer average distance, which leads to a lower per-km rate; 2) most of the drive between Bangkok and Laem Chabang is outside the city of Bangkok,[8] making 52.9 km/hr (32.9 mph) a realistic speed for truck transportation taking place primarily outside of urban areas (as opposed to low speeds in other Southeast Asia countries, where the ports are located in/near the city); and 3) documentation on the record shows that the travel time from Bangkok to Laem Chabang using a small passenger vehicle is 90 minutes (or approximately 85 km/hour), which supports the inference that 52.9 km/hr is an accurate average figure for transportation covering both urban and rural areas. Finally, CPZ/SKF notes that the Department used Doing Business 2016 to value truck freight in other recent proceedings.[9]

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[4] See Memorandum to the File from Blaine Wiltse and Manuel Rey, Analysts, AD/CVD Operations, Office II, entitled "Surrogate Value Memorandum for the Preliminary Determination of the Antidumping Investigation of Tapered Roller Bearings and Parts Thereof, Finished, or Unfinished, from the People's Republic of China," (Surrogate Value Memo) dated July 5, 2016, at 7.

[5] See Petitioner's Case Brief, at 2 (citing Doing Business 2016, at 73).

[6] Id., at 2 (citing the petitioner's August 10, 2016, rebuttal factual information submission, at Attachment 2).

[7] Id. (citing Attachment 4).

[8] See CPZ/SKF's Rebuttal Brief, at 2.

[9] Id., at 4 (citing Large Residential Washers From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value; Affirmative Preliminary Determination of Critical Circumstances, in Part, and

Department's Position:

The Department's practice when selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR.[10] Because the Doing Business 2016 data meet all of these criteria and satisfy them to greater extent than the alternative (i.e., the Doing Business 2015 data), we find these data to be the best available information for use in valuing truck freight in these final results. Specifically, we note that Doing Business 2016 is more contemporaneous to the POR than Doing Business 2015. The freight information contained in Doing Business 2016 is "current as of June 2015," and is based on information collected with respect to shipments made during the entire POR. By contrast, Doing Business 2015 is reflective of freight rates in effect prior to the POR with the exception of June 1, 2014.

We disagree that evidence on the record demonstrates that the costs shown in Doing Business 2016 are for rail freight. While this publication does state that the mode of transportation is "the one most widely used for the chosen export or import product," that fact does not indicate that the mode of transportation is more or less likely to be rail. Indeed, information on the record indicates that the container depot at the port services both trains and trucks.[11] Nonetheless, we find it unlikely that companies in Thailand would ship their products to the port by rail, given that the distance between the "industrial areas" and the port is 129 kilometers (i.e., a relatively short distance) and the starting and ending points are on the outskirts of the same city.[12]

Moreover, there is no information on the record to indicate that the most common transportation method in Thailand would change from one year to the next (i.e., 2015 to 2016), nor has the petitioner addressed this point. With regard to the petitioner's argument that the transport speed stated in the report (i.e., 52.9 km per hour) supports its conclusion, we disagree. As CPZ/SKF correctly notes, most of the drive between Bangkok and Laem Chabang is outside the city of Bangkok at speeds likely greater than 52.9 km per hour. Thus, the urban congestion cited by the petitioner would not come into play.

Finally, we disagree that a comparison of the costs in Doing Business 2016 and Doing Business 2015 indicates a change in the mode of transportation. We find it uninformative that the cost in

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Postponement of Final Determination, 81 FR 48,741 (July 26, 2016) (PRC Washers Prelim), and accompanying Preliminary Decision Memorandum at 27-28; and Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015, 81 FR 29,528 (May 5, 2016), and accompanying Preliminary Decision Memorandum, at 22).

[10] See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016), and accompanying Issues and Decision Memorandum, at Comment 28.

[11] See the petitioner's August 10, 2016 rebuttal factual information submission, at Attachment 2 (CMA CGM, Thailand Import Quick Guide, available at: http://www.cmathaischedule.com/UserFiles/File/Thailand%20Import%20Quick%20Guide%20update_08.03.13.pdf).

[12] See Surrogate Value Memo.

the current publication is six times smaller than the amount originally proposed by the respondents in this review based on Doing Business 2015, and seven times smaller than the rate used in the prior administrative review. The rates derived from Doing Business 2015 required the Department to make certain assumptions, including different starting and ending points, which materially affected the per-unit freight cost.[13] Specifically, whereas the Doing Business 2016 data provided an average distance with which the Department could determine a per-km rate, the Doing Business 2015 data did not (thereby requiring the Department to estimate a distance). That estimate was several times smaller than the distance provided in Doing Business 2016 and, thus, accounts for much of the purported disparity. Additionally, the Doing Business 2016 publication increased its estimate of the number of kilograms which can fit into a standard 20' container to 1,500, up from 1,000 in 2015. This change in methodology also had a significant impact on the freight rate.

Because the record contains no evidence establishing that the value in Doing Business 2016 is for rail freight, we find the petitioner's arguments to be based merely on speculation, rather than substantial evidence.[14] Therefore, we have continued to rely on the freight costs shown in Doing Business 2016 to determine the SV for truck freight in these final results for the reasons noted above. This decision is consistent with the Department's decisions in other recent cases.[15]

Yantai CMC Issues

Comment 2: *The Department Should Grant Yantai CMC a Separate Rate*

In the Preliminary Results, the Department found that Yantai CMC was not eligible for a separate rate because it failed to demonstrate an absence of de facto government control.[16] Yantai CMC disagrees with this decision, arguing that it has participated in TRBs proceedings for over 20 years, and each time the Department granted Yantai CMC a separate rate after examining its corporate structure and operations. Therefore, Yantai CMC maintains that the Department should conduct a full separate rate analysis and assign it a separate rate in this proceeding. Further, Yantai CMC contends that the Department should reconsider its separate rates test both in practice and as applied to Yantai CMC in light of its obligations under U.S. law.

[13] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014, 81 FR 1396 (July 12, 2016) (TRBs AR27 Final Results), and accompanying Issues and Decision Memorandum, at Comment 3.

[14] See Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466, 472 (CIT 1999), explaining that speculation cannot constitute substantial evidence.

[15] See Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, 81 FR 75032 (June 8, 2016), and accompanying surrogate value memorandum at 9 (unchanged in Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 81 FR 75032 (October 28, 2016)); see also PRC Washers Prelim, 81 FR at 48741 (July 26, 2016), and accompanying factor value memorandum, at 5 (unchanged in Large Residential Washers From the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances, 81 FR 90776 (December 15, 2016)).

[16] See TRBs Preliminary Decision Memo, at 7.

Yantai CMC argues that the Department's separate rates practice is inconsistent with U.S. law. Yantai CMC maintains that the Department is required under the unambiguous language of section 735(c)(5) of the Act to assign an all-others rate to all exporters and producers not individually investigated. Yantai CMC argues further that the Department's separate rate practice is not set forth in the Act, nor is it in any Department regulation.[17] As such, Yantai CMC contends that the Department's separate rates practice is merely a policy, and the policy is contrary to U.S. law.

Yantai CMC maintains that, even if the Department does not find that its separate rates practice contravenes U.S. law, it is no longer appropriate as a policy matter to apply a separates rates practice to the PRC. Yantai CMC argues that, just as the Department abandoned its non-application of countervailing duty (CVD) cases against the PRC in the course of a review, it should similarly abandon its separate rates practice in this proceeding. Yantai CMC maintains that the separate rates practice was originally developed to prevent NMEs from "manipulating export and production" among their exporters in order to circumvent U.S. antidumping measures.[18] Yantai CMC contends that the PRC has undergone significant economic reforms over the last fifty years such that the rationale behind the separate rates practice is no longer applicable.[19] Accordingly, Yantai CMC argues that the rebuttable presumption that all PRC exporters are under government control is unsupported by fact or policy.

Yantai CMC maintains that the Department has granted separate rates to PRC exporters even when owned by state-owned enterprises (SOEs) since the Department's decision in Silicon Carbide.[20] Yantai CMC contends that pursuant to PRC market reforms, PRC enterprises operate with complete decisional and operational autonomy, with no government interference in daily export operations.[21] Indeed, Yantai CMC argues that the PRC government has no legal authority to "manipulate export and production" with the goal to circumvent antidumping duties.[22]

Yantai CMC cites to the Department's 2007 decision, reflected in the Georgetown Steel Memo, to apply CVDs to the PRC in arguing reforms in the following areas present a significantly different picture than the traditional communist system of the early 1980s:[23]

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[17] See Yantai CMC's August 22, 2016, case brief (Yantai CMC Case Brief) at 5 (citing "Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Reviews Involving Non-Market Economy Countries" (April 5, 2005), the sample Separate Rate Application issued for Chinese cases available at http://ia.ita.doc.gov/, and the July 5, 2013, and De Facto Criteria for Establishing a Separate Rate in Antidumping Proceedings Involving Non-Market Economy Countries, 78 FR 40430 (July 5, 2013)).

[18] See Yantai CMC Case Brief, at 6.

[19] Id.

[20] See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide).

[21] See Yantai CMC Case Brief, at 6.

[22] Id.

[23] See Memorandum to David Spooner, Assistant Secretary for Import Administration, from Shauna Lee-Alaia and Lawrence Norton, Office of Policy, Import Administration, entitled "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China- Whether the Analytical Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy," dated March 29, 2007, available at

- Wages and prices;
- Access to foreign currency;
- Personal property rights and private entrepreneurship;
- Foreign trading rights; and
- Allocation of financial resources.[24]

Yantai CMC contends that these reforms cited as support for the Department's application of CVD law to China directly contravene the assumption in NME cases that all entities in an NME are subject to government control absent those entities passing the separate rates test.

First, Yantai CMC maintains that de jure government control by the PRC government over a company's export activities can no longer be presumed because of the 1994 Company Law and the submission of business and export licenses, both of which demonstrate exporter decisions that are independent of the government.[25] Second, Yantai CMC contends that the de facto presumption of government control over domestic or export pricing is refuted by the Department's finding that "market forces now determine prices for more than 90 percent of the products traded in China."[26] Yantai CMC argues that based on the findings in the Georgetown Steel Memo, the Department should presume an *absence* of both de jure and de facto PRC government control. Moreover, Yantai CMC maintains that the Department cannot simultaneously find that the PRC government and PRC companies are both separable and inseparable from one another depending on whether it is an antidumping or CVD proceeding, given that the analysis will depend on the same issues and facts.[27]

Yantai CMC contends that, were the Department to cease its separate rates practice with respect to the PRC, it would still consider the PRC to be an NME similar to CVD cases against the PRC, which employ an NME CVD practice (e.g., use of benchmarks). Yantai CMC argues that a decision to abandon the separate rates test does not mean that the PRC would be considered a market economy; the Department would still apply its SV practice for calculating NV, especially because the statute does not require the separate rates test.

Yantai CMC maintains that, even if the Department is unwilling to abandon its separate rates test, it should amend its de facto analysis to remove the "autonomy from the government in making decisions regarding the selection of management" criterion. Yantai CMC contends that

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http://enforcement.trade.gov/download/nme-sep-rates/prc-cfsp/china-cfs-georgetown-applicability.pdf (Georgetown Steel Memo).

[24] See Yantai CMC Case Brief, at 4 and 7-8.

[25] Id., at 9.

[26] Id., at 10, citing Georgetown Steel Memo at 5 (quoting The Economist Intelligence Unit, Country Commerce: China, 2006, p. 73).

[27] See Yantai CMC Case Brief, at 11, citing Advanced Technology & Materials Co., Ltd v. United States, 938 F. Supp. 2d 1342, 1352-53 (CIT 2013) (Advanced Technology II), to support its position that the Department needs to analyze this apparent discrepancy between antidumping and CVD practice. Yantai CMC claims that the Court of International Trade recognized this as a "meritorious argument," though it did not actually reach the merits of the issue.

the Department noted in the Georgetown Steel Memo, at page 8, that SOEs have the legal right to act as independent entities under the 1994 Company Law, including independent import and export decisions on amounts and price. As a result, Yantai CMC argues that autonomy in management decisions has no relevance in determining an exporter's independence from government control.

The petitioner argues that the Department's separate rate practice is supported by law and has been upheld by the courts in previous Department proceedings.[28] The petitioner contends that the Department has rejected similar arguments and the U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed the Department's authority to use its separate rate practice.[29] The petitioner argues further that Yantai CMC's reliance on the Georgetown Steel Memo is misplaced, as the Department has rejected this same argument in other proceedings. The petitioner cites to OTR Tires and PVLT Tires in arguing that the Georgetown Steel Memo focused on the concept of the single economic entity rather than the NME-wide entity. Accordingly, the petitioner claims that the Georgetown Steel Memo discusses reforms associated with the absence of a Chinese central authority that comprises the PRC economy, thus allowing the Department to conclude that a countervailable subsidy has been bestowed upon a PRC producer. The petitioner contends that the Department concluded in the two above cases that the Georgetown Steel Memo does not apply to the issue of the PRC-wide entity in antidumping proceedings.[30]

Department's Position:

We disagree with Yantai CMC. As the petitioner noted, the Department recently reaffirmed that the analysis in the Georgetown Steel Memo focused only on the concept of the single economic entity that characterized the economies in Georgetown Steel[31] and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for antidumping duty purposes.[32] Given the reforms discussed in the Georgetown Steel Memo, the Department found that a single central authority no longer comprises the PRC's economy and that the policy that gave rise to the Georgetown Steel litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a PRC producer. As such, we agree

[28] See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 20197 (April 15, 2015) (OTR Tires), and accompanying Issues and Decision Memorandum at Comment 1.

[29] See Georgetown Steel Corp. v. United States, 801 F.2d 1308 (CAFC 1986) (Georgetown Steel); see also 1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) (Tetra from China), and accompanying Issues and Decision Memorandum at Comment 1; OTR Tires, at Comment at 1 ("{W}e disagree with Double Coin's contention that the Department has no authority to issue a rate for the NME entity."); and Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part, 80 FR 34893 (June 18, 2015) (PVLT Tires), at Comments 35-36.

[30] See OTR Tires, at Comment 1; and PVLT Tires, at Comments 35-36.

[31] See Georgetown Steel, 801 F.2d at 1308.

[32] See PVLT Tires, at Comment 36.

with the petitioner that the analysis in the Georgetown Steel Memo is inapplicable to the issue of the PRC-wide entity in antidumping proceedings.

In antidumping proceedings involving NME countries such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government (e.g., a firm is nothing more than a government work unit), but rather from the NME-government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy. As such, this presumption is patently different from a presumption that all firms are one-and-the same as the government, such that they comprise a monolithic economic entity. Moreover, the presumption underlying the separate rates test was upheld in Sigma,[33] where the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources. The CAFC also stated that it was within the Department's authority to employ a presumption of state control for exporters in an NME-country and to place the burden on the exporters to demonstrate an absence of central government control.[34] Firms that do not rebut the presumption are assessed a single antidumping duty rate, i.e., the NME-Entity rate.[35] However, in recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department developed the separate rates test. In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control. Rather, the PRC's economy today is neither command-and-control nor market-based; government control and/or influence is omnipresent (which gives rise to the presumption) but not omnipotent (and hence, the presumption is rebuttable).

In the Department's experience applying the separate rate test, the de jure factors are not overridingly indicative of the absence of control of export activities in the typical case, but rather they demonstrate an ability on the part of the exporter to control its own commercial decision making. In large part, the laws and regulations that the Department has examined over the years indicate that a certain level of control has devolved in that the commercial decision-making can lie with the various corporate entities operating under these laws and regulations, which in turn, merits an analysis of the record evidence to ensure that there is an absence of de facto aspects of government control over export activities. This is supported by our findings over the years that numerous PRC respondents operating under such laws also maintain de facto control over their export functions. These situations where parties are found to be entitled to a separate rate are, however, based on the individual facts with respect to each such party on the record of the segment. Because of the centralized control inherent in the PRC's status as an NME country, we presume that decision making of an enterprise in an NME country is under a form of centralized government control (whether at the central, provincial, or local level). Nevertheless, the PRC Company Law and other laws and regulations demonstrate that, within the PRC's NME, distance can exist between decisions made at the central government level and decisions made at the firm

[33] See Sigma Corp. v. United States, 117 F.3d 1401, 1405-06 (CAFC 1997) (Sigma).

[34] Id.

[35] See 19 CFR 351.107(d), which provides that "in an antidumping proceeding involving imports from a non-market economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."

level with respect to exports. Thus, an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

The Department also disagrees with Yantai CMC's reliance on a partial quote regarding prices in the PRC. The Georgetown Steel Memo states that "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in China."[36] Yantai CMC argues that this language "refutes any de facto presumption of government control over domestic or export pricing."[37] However, this quote is a reference to deregulation of prices, i.e., phasing out of the direct, administrative price-setting common in command-and-control economies. It is not a reference, for example, to an absence of direct government control over resource allocations or government control or influence over economic actors that can fundamentally distort the price formation process. Therefore, the reference is not relevant to our requirements that NME companies seeking a separate rate demonstrate the absence of de jure or de facto control.

Comment 3: *The Denial of Separate Rate Status for Yantai CMC is not Supported by Record Evidence*

Yantai CMC contends that it has satisfied both the de jure and de facto prongs of the separate rates test and, thus, it should be granted a separate rate. Yantai CMC maintains that the Department correctly accepted its de jure independence from government control.[38] However, Yantai CMC argues that the Department's decision to deny it a separate rate based on de facto government control is unjustified and the Department should change this decision for the final results.

Yantai CMC argues that, despite the focus of the de facto analysis on export operations (i.e., price, quantities sold and customers), the Department focused on Yantai CMC's autonomy from the PRC government in selecting management. Yantai CMC maintains that the Department's focus on management in this case is based on the flawed decision in the Diamond Sawblades[39] litigation, as reflected in the Second Remand of Diamond Sawblades,[40] which did not eliminate the Department's requirement to undertake both a de jure and de facto separate rate analysis.

[36] See Georgetown Steel Memo, at 5.

[37] See Yantai CMC Case Brief, at 10.

[38] Id., at 13 (citing Memorandum to the File from Manuel Rey, Analyst, AD/CVD Operations, Office II, entitled "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; 2014-2015 Administrative Review," dated July 5, 2016 (internal footnotes omitted) (Separate Rates Memo) at 3-4.

[39] See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) (Diamond Sawblades).

[40] See Yantai CMC Case Brief, at 11 (citing Final Results of Redetermination Pursuant to Remand Order Diamond Sawblades and Parts Thereof from the People's Republic of China, Advanced Technology & Materials Co., Ltd. v. United, Consol. Ct. No. 09-00511, Slip Op. 12-147, at 6 (CIT 2012) (May 6, 2013) (Second Remand of Diamond Sawblades) (citations omitted)). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf.

Yantai CMC contends that the decision in Diamond Sawblades to deny a separate rate involved autonomy from the PRC government when selecting management. Yantai CMC notes that in the Second Remand of Diamond Sawblades the court agreed with the Department that government ownership was not dispositive of control. However, Yantai CMC argues that the impact of the Diamond Sawblades decision is that State-owned Assets Supervision and Administration Commissions of the State Council (SASAC) ownership of a company will result in a finding of government control and denial of a separate rate; Yantai CMC contends that this is unreasonable. Yantai CMC maintains that control denotes direction and coordination of export activities, which do not exist in this proceeding.

Yantai CMC contends that in December 2010, the Department solicited comments regarding its de facto separate rate criteria and, based on these comments, it decided to make separate rate decisions on a case-by-case basis.[41] Yantai CMC argues that in De Facto Separate Rate Criteria Notice, the Department determined that government ownership, on its own, did not mean government control over export activities. Yantai CMC maintains that the Department interpreted Silicon Carbide to stand for the premise that application of a country-wide rate to government-owned enterprises may not be warranted in a given proceeding and that a respondent may receive a separate rate if it establishes both de jure and de facto absence of government control.[42] Yantai CMC argues that based on the De Facto Separate Rate Criteria Notice and Silicon Carbide, the Department cannot deem a certain level of government ownership to automatically represent de facto control and must conduct a de facto separate rate analysis of all aspects of Yantai CMC's export activities, not just ownership, in this proceeding.

Yantai CMC contends that information to support the following has been submitted on the record of this proceeding and establishes that it has satisfied the de facto prong of the separate rates test:[43] 1) none of its board members had relationships with national, provincial, or local government authorities; 2) there is no evidence that shareholders, managers, or board members interfered with the day-to-day operations of Yantai CMC; 3) there is no evidence of government involvement in setting export prices, negotiating and signing export contracts or price negotiations; 4) there is no government input in selecting management; 5) Yantai CMC's board members were all selected by legally-incorporated PRC entities subject to corporate law requirements regarding management and operations; 6) there is no evidence that Yantai CMC's board of directors interferes with its daily operations when overseeing Yantai CMC's management; 7) Yantai CMC retains proceedings from export sales and makes independent decisions regarding profits and losses; and 8) Yantai CMC only paid monies to government accounts for taxes and government-provided goods and services.[44]

[41] See Yantai CMC Case Brief, at 5 (citing De Facto Criteria for Establishing a Separate Rate in Antidumping Proceedings Involving Non-Market Economy Countries, 78 FR 40430 (July 5, 2013) (De Facto Separate Rate Criteria Notice)).

[42] Id., 78 FR at 40443.

[43] See Yantai CMC's September 30, 2015, section A response (Yantai CMC Section A Response), at 9 and Yantai CMC's supplemental section A response, dated November 10, 2015 (Yantai CMC Supp A Response).

[44] Id.

Yantai CMC maintains that, based on the above, there is insufficient evidence to show government control over its export activities. Yantai CMC argues further that there are four degrees of separation between itself and the SASAC and absent control or linkage, the Department should not deny it a separate rate.

Finally, Yantai CMC argues that, by focusing on majority government ownership of Yantai CMC, without an examination of the record evidence under each criterion of the de facto prong, the Department has incorrectly presumed that government ownership of an exporter in an NME investigation will automatically result in the denial of a separate rate. Yantai CMC argues that, in Inland Steel v. United States, the CAFC upheld the CIT's decision that, although presumptions may be established by administrative agencies, "their validity depends as a general rule upon a rational nexus between the proven facts and presumed facts."[45] Yantai CMC argues that, in this case, there is no rational nexus between the record evidence and the presumption that the Chinese government has control over Yantai CMC's operations, and the Department failed to evaluate record evidence that demonstrates that the Chinese government does not control Yantai CMC's operations.

The petitioner argues that, in the previous review, the Department found that Yantai CMC was not entitled to a separate rate and so assigned it the PRC-wide dumping margin. According to the petitioner, since the company has not provided information demonstrating any significant changes from the facts in the previous preceding, the Department should continue to find that the company is not entitled to a separate rate and assign it the PRC-wide rate.

Department's Position:

As we stated in the Preliminary Results, in proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,[46] as further developed in Silicon Carbide.[47]

In accordance with this separate rates test, the Department assigns separate rates to respondents in NME proceedings if respondents demonstrate the absence of both de jure and de facto government control over their export activities.[48]

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[45] See Yantai CMC Case Brief, at 19 (citing Inland Steel v. United States, 188 F.3d at 1360-61 (quoting United Scenic Artists, Local 829 v. NLRB, 762 F.2d 1027, 1034 (D.C. Cir. 1985))).

[46] See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers).

[47] See Silicon Carbide, 59 FR at 22585, 22586-89.

[48] See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007); Brake Rotors From the People's Republic of China; Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the Diamond Sawblades antidumping duty proceeding, and the Department's determinations therein.[49] In particular, we note that in litigation involving the diamond sawblades proceeding, the CIT found the Department's existing separate rates analysis deficient in the specific circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[50] Following the CIT's reasoning, as affirmed by the CAFC, in recent proceedings, we concluded that where a government entity holds a majority ownership share, either directly or indirectly,[51] in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[52] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.

Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); and Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

[49] See Second Remand Determination in Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343 (CIT 2012) (Advanced Technology), affirmed in Advanced Technology II. See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memo, at 7, unchanged in Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum, at Comment l.

[50] See, e.g., Advanced Technology, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); id., at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration Commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); id., at 1355 ("The point here is that 'governmental control' in the context of the separate rates test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); id., at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

[51] Yantai CMC appears to argue that *indirect* ownership is materially different from *direct* ownership for purposes of our analysis. See Yantai CMC's Case Brief, at 17 (arguing that the corporate ownership linkage "is extremely attenuated"). We note, however, that in Advanced Technology II, the majority-SASAC ownership was indirect. See Advanced Technology II, at 1345 (noting that SASAC owned 100 percent of CISRI, and CISRI in turn held a majority share in AT&M). Moreover, as explained below, in our Preliminary Results, we identified evidence showing an unbroken line of control between SASAC and Yantai CMC.

[52] See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

We agree with Yantai CMC that we found in the Preliminary Results that Yantai CMC has demonstrated a lack of de jure control. We continue to reach that conclusion in these final results. With respect to de facto control, as we stated in the Preliminary Results, the Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: 1) whether the export prices are set by, or are subject to the approval of, a government agency; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and, 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[53]

As noted above, the CAFC has held that the Department has the authority to place the burden on the exporter to establish an absence of government control.[54] For the reasons explained below, the Department continues to find, based on consideration of the totality of the record evidence, that Yantai CMC has not demonstrated an absence of de facto government control, and is, therefore, not entitled to a separate rate.

In the Preliminary Results, we determined, and record evidence supports, that Yantai CMC is indirectly majority-owned by SASAC. As noted above, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. In the Preliminary Results, we identified additional record evidence that we found (and continue to find) supports that expectation in this review.

Specifically, we note that evidence demonstrates that, via SASAC, the PRC government exercises its rights inherent in majority ownership, as expected. We found that SASAC has the ability to appoint the board of directors of its wholly-owned PRC company (company A), as reflected in company A's articles of association and a director appointment letter showing the actual exercising of such ability by SASAC.[55] Company A itself has the ability to appoint all board members of its wholly-owned PRC company (company B).[56] Company B in turn maintains majority ownership of Yantai CMC, with the ability to appoint the majority of Yantai CMC's Board.[57]

Moreover, Yantai CMC's Board appoints the General Manager, who is nominated by Company B.[58] Yantai CMC's Board also appoints other senior management positions.[59] Finally, the record shows that overlap exists between the management of Yantai CMC, company B, and

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[53] See Silicon Carbide, 59 FR at 22586-89; and Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

[54] See Sigma, 117 F.3d, at 1405–06.

[55] See Yantai CMC Supplemental A Response, at Exhibits 2 and 3.

[56] Id., at Exhibit 2-3.

[57] Id.

[58] See Yantai CMC Section A Response, at 9.

[59] Id., at 9-10

company A. The Chairman of Yantai CMC, is also a Vice-President at company B; in addition, a member of company B's Board of Directors and Deputy General Manager is also a Deputy General Manager at company A.[60] In its case brief, Yantai CMC did not dispute our characterization of this evidence, which was explained in our Separate Rate Memo.[61]

Furthermore, though Yantai CMC makes arguments related to what it perceives as the absence of certain record evidence showing control, we note that the standard for determining separate rate status is that an NME exporter is presumed to be under government control until such a presumption is sufficiently rebutted. As such, Yantai CMC's citation to the purported absence of evidence of control or other demonstrable action on behalf of the PRC government does not rebut this presumption.

Based on the foregoing, and consistent with our view that a majority government ownership holding in and of itself means that the government exercises, or has the potential to exercise de facto control over a company's operations generally, we conclude that Yantai CMC does not satisfy the criteria demonstrating an absence of de facto government control over export activities. As a result, the Department continues to find that Yantai CMC has not demonstrated that it is free from de facto government control. Therefore, Yantai CMC remains ineligible for a separate rate for these final results.[62]

Comment 4: *The Rate Assigned to Yantai CMC*

Yantai CMC argues that should the Department continue to deny it a separate rate, it should apply a rate other than the PRC-wide rate. Yantai CMC claims that assignment of the PRC-wide rate is effectively an adverse facts available (AFA) rate, as it represents the rate assigned to the PRC-wide entity as AFA in a prior segment of this proceeding.[63] Yantai CMC maintains that the Department only applies AFA when a respondent has failed to cooperate to the best of its ability[64] (e.g., failed to respond to the Department's questionnaires, withdrew from the proceeding, or failed verification). Yantai CMC contends that the Department applies neutral facts available to cooperating respondents which answer questionnaires and pass verification.[65] For the above reasons Yantai CMC contends that there is no basis for applying AFA to it.

[60] See Yantai CMC Section A Response at 2 and 9; see also Yantai CMC Supp A Response, at 2.

[61] See Separate Rate Memo, at pages 4 and 5.

[62] Due the proprietary nature of this issue, see the Separate Rate Memo, at 4 and 5 for a discussion of the ownership of Yantai CMC and the role of Yantai CMC's board of directors and management.

[63] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009), in which the PRC rate was based on total AFA, which was the highest rate calculated in any segment of the proceeding.

[64] See Yantai CMC Case Brief, at 21 (citing Ad Hoc Shrimp Trade Action Comm. v. United States, 675 F. Supp. 2d 1287, 1303 (CIT 2009) (quoting Nippon Steel Corporation v. United States, 337 F.3d, 1373, 1381, (CAFC 2003)).

[65] See Yantai CMC Case Brief, at 21 (citing Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008)).

Department's Position:

We disagree with Yantai CMC. In Advanced Technology II, the CIT addressed and rejected a similar argument, stating "Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate to the best of its ability whereas the PRC-wide rate applies to a respondent who has not received a separate rate."[66] As in that case, here, the Department is not applying AFA to Yantai CMC individually, but rather has found that Yantai CMC has failed to rebut the presumption of government control and as a result, we are assigning to it the rate applied to the PRC-wide entity. Further, the PRC-wide entity is not under review, and, therefore, its rate cannot change as a result of this review.

Comment 5: *The Department's Separate Rates Test and the Rate Assigned to Yantai CMC Are Inconsistent with the WTO Agreements*

Yantai CMC contends that conditioning individual dumping rates on establishing independence from the government are inconsistent with Articles 6.10 and 9.2 of the WTO's Antidumping Agreement, which require, absent a high number of exporters or producers, the calculation of dumping margins for each known exporter or producer. As support for this proposition, Yantai CMC cites Shrimp from Vietnam[67] and EU Fasteners from China.[68] Yantai CMC claims that those WTO decisions establish that the Department's separate rates practice does not comply with its international obligations.

Yantai CMC maintains that in EU Fasteners from China, the Appellate Body considered the issue of whether an investigating authority can presume government control of all exporters and subject such exporters to a country-wide rate, absent exporters' and producers' meeting certain criteria to allow individual examination.[69]

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[66] See Advanced Technology II, at 1351, quoting Watanabe Group v. United States, Ct. No. 09-00520, Slip-Op 10-139, at 8 (CIT 2010) (Watanabe) ("Commerce's permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful.") and Jiangsu Changbao Steel Tube Co., Ltd. v. United States, 884 F. Supp. 2d. 1295, 1312 n.21 (CIT 2012) (referencing Watanabe, at 8) ("losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control… applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration.").

[67] See Panel Report, United States- Anti-Dumping Measures on Certain Shrimp from Vietnam, WT/DS404/R, adopted 2 September 2011 (Shrimp from Vietnam). The Panel Report was adopted by the DSB with no party appealing the decision. See WT/DS404/9 (September 5, 2011).

[68] See Appellate Body Report, European Communities- Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/AB/R, adopted 28 July 2011 (EU Fasteners from China).

[69] Id., at 358-370.

Yantai CMC argues that the Appellate Body determined that the country-wide presumption is inconsistent with Articles 6.10 and 9.2, which establish a general rule requiring the investigating authority to calculate individually an AD rate for each known exporter.[70]

Yantai CMC contends that in Shrimp from Vietnam, the Department defended its separate rates test by claiming that it assigned a Vietnam-wide entity rate, as opposed to a Vietnam-wide country rate, thus considering those companies that had not established freedom from government export controls as part of one entity identified as "exporter" or "producer" under Article 6.10 of the Antidumping Agreement. Yantai CMC acknowledges that in EU Fasteners from China, the Appellate Body considered a similar argument and recognized an administering authority's right to consider State-influenced pricing and output to several companies could render these companies as one exporter due a single margin. However, Yantai CMC contends that the Appellate Body found that the test used must actually determine whether individual exporters are sufficiently integrated such that they constitute a single exporter. Yantai CMC maintains that the Appellate Body found the EU Individual Treatment (IT) Test did not satisfy that function because the IT Test was applied cumulatively and some factors did not address whether distinct exporters were sufficiently integrated.

Yantai CMC contends that, similar to EU Fasteners from China, the Department's separate rates test contains factors that fail to address integration and at least two factors, the appointment of management and disposition of profits as an exporter, do not speak to the issue of integration.

Finally, Yantai CMC maintains that, even assuming the Department's separate rates test is consistent with the Appellate Body's decision in EU Fasteners from China, it is not consistent with the WTO's Antidumping Agreement. Yantai CMC argues that the Appellate Body has decided that, as Articles 6.10 and 9.2 establish a general rule for the investigating authorities to individually calculate margins, it is the investigating authority's obligation to determine whether one or more exporters have a relationship with the State such that they can be considered as a single entity;[71] a blanket presumption does not satisfy that obligation.

Department's Position:

We disagree with Yantai CMC that our separate rates practice is inconsistent with our obligations under the WTO Agreements.

The cited WTO decisions are not relevant to our separate rates practice and decision in this case to find Yantai CMC to be under PRC-government control. The CAFC has held that WTO reports are without effect under U.S. law "unless and until such a report has been adopted pursuant to the specified statutory scheme" established in the URAA.[72] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[73] As

[70] Id., at 364.

[71] Id., at 376.

[72] See Corus Staal BV v. U.S. Dep't of Commerce, 395 F.3d 1343, 1347-1349 (CAFC 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007).

[73] See, e.g., 19 U.S.C. §3533, 3538.

is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of the Department's discretion in applying the statute.[74] We note the Department has adopted no change to its methodology pursuant to the URAA's statutory procedure.

Comment 6: *The Department Should Continue the NSR and Calculate a Margin for the Final*

Bolong reported one sale of subject merchandise to the United States during the POR. Consistent with the Department's practice, in our preliminary results, we analyzed whether this sale was bona fide and, therefore, reviewable.[75] After examining the totality of the circumstances surrounding the reported sale, we preliminarily found that it was not, and, thus, it did not provide a reliable basis to calculate a dumping margin.[76] In light of this finding, we preliminarily rescinded the NSR.[77]

Bolong disagrees with the Department's analysis, arguing that it was flawed with respect to six of the seven factors considered (i.e., the price, quantity, and timing of the sale, the profitability of the resale, whether the transaction was at arm's length, and other relevant criteria, such as the absence of marketing materials).[78] Therefore, Bolong argues that the Department should reinstate the review, verify its submissions, and calculate a margin for it for the final results.

With respect to first two factors (i.e., price and quantity), Bolong notes that the Department compared its reported information to the price and quantity data submitted by the mandatory respondents in the concurrent administrative review. According to Bolong, this analysis is not meaningful because: 1) Bolong's sale is at a different marketing stage than the sales of the other companies, given that Bolong's sale was made on an export price (EP) basis, while the others' were constructed export price (CEP) sales (and, thus, Bolong's prices were bound to be different); 2) despite this, Bolong's prices were generally in the range of the prices charged by the other companies;[79] and 3) Bolong's quantities were in the range of Yantai CMC's quantities. Bolong notes that the Department acknowledged the first and second points in its Bona Fides Analysis Memo.[80] However, it claims that the Department arbitrarily placed more weight on any observed differences, particularly with respect to CPZ/SKF.[81] Bolong contends that the Department provided no rational explanation as to why the CPZ/SKF pricing data is preferable to

[74] See, e.g., 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

[75] See generally section 751(a)(2)(B) of the Act and 19 CFR 351.214.

[76] See Preliminary Results, and accompanying Preliminary Decision Memo, at 4-5.

[77] Id., at 5.

[78] Bolong did not take issue with the Department's analysis with respect to expenses arising from the sale.

[79] Specifically, Bolong notes that its prices for cups fell within the price range for cup sales by both other companies, and its price for cones was only slightly different than CPZ/SKF's.

[80] See Memorandum to Melissa Skinner, Director, Office II, from Manuel Rey, Analyst, entitled "New Shipper Review of Tapered Roller Bearings and Parts Thereof from the People's Republic of China – Bona Fides Sales Analysis" dated July 5, 2016 (Bona Fides Analysis Memo).

[81] Bolong speculates that its and CPZ/SKF's price differences may be attributable to quantity discounts, which are customary across numerous industries.

Yantai CMC's, nor did it recognize that Yantai CMC's quantity data make Bolong's quantities seem reasonable by comparison.[82] Thus, Bolong equates the Department's analysis to a subjective cherry-picking exercise.

Regarding the third factor (i.e., timing), Bolong concedes that it communicated with its U.S. customer prior to receiving its business license, and the customer issued the purchase order to the predecessor company, Yongxiang. However, it disagrees that this fact renders its sale "atypical," or that it gives the Department any reason to question whether the sale was in fact made by Bolong itself (instead of by Yongxiang). Bolong argues that the record clearly shows that the sale was between Bolong and the customer, as evidenced by the fact that Bolong issued the invoice and shipped the merchandise to the United States a full month after it received its business license. Bolong maintains that it is understandable that the customer sent the purchase order to Yongxiang, given that Bolong was not yet in a position to receive commercial documents, and it asserts that there is nothing unusual, improper, or illegal about a company's taking steps in furtherance of an eventual sales transaction prior to the receipt of a business license. Indeed, Bolong claims that there is no record evidence that, under Chinese law, a fully-functioning factory must shutter its doors during the business license processing period. According to Bolong, the Department should accord much greater weight to the fact that Bolong made, invoiced, and shipped the products, and it received the payment for them.

With regards to the fourth factor (i.e., profitability), Bolong contends that the Department found that Bolong's customer made a profit on the resale. However, Bolong maintains that the Department unreasonably did not end its profitability analysis there, but instead it compared the U.S. customer's invoice formats across different segments of this proceeding. According to Bolong, this analysis was highly subjective and the slight differences it revealed were not meaningful. In fact, Bolong claims that the invoices were more similar than different, and there are a number of possible reasons for the variations (although Bolong does not provide any). In any event, Bolong claims that these differences are not relevant to the question of whether the resale was profitable, and, thus, the Department need not consider them in its final analysis.

With respect to the fifth factor (i.e., the arm's-length nature of the sale), Bolong notes that the Department considered the pre-existing long-term relationship between the owner of Bolong and an individual employed by the U.S. customer. However, Bolong argues that it would be unreasonable to expect parties to remain indifferent strangers as a condition for finding a sale to be at arm's-length. Bolong asserts that the Department should instead focus on record evidence which shows price negotiations (including a rejected offer), invoicing, and payment between unaffiliated parties, and which demonstrates that the sale is commercially legitimate and profitable. Finally, Bolong argues that, the irrelevance of the parties' positive regard for each other notwithstanding, there is no evidence that Bolong's owner would not develop a similarly-positive regard for future customers over time. Thus, Bolong contends that the Department should find the sale to be at arm's-length.

[82] Indeed, Bolong questions why the Department finds Bolong's quantities too different relative to the other respondents, when it could just as easily have found the others' data too different from Bolong's.

With regard to the final factor (i.e., additional considerations), Bolong notes that the Department found relevant that Bolong at its inception had no website, email address, or product catalog, and it had only one U.S. sale. Bolong characterizes these facts as "of oblique relevance at best," particularly given that this segment of the proceeding is an NSR. According to Bolong, it is routine in NSRs involving the PRC (and other countries) to have a single sale made for the purpose of obtaining a company-specific dumping margin, rather than continuing to export at the commercially-prohibitive PRC-wide rate.[83] Bolong notes that the Department has found that single sales are not inherently commercially unreasonable, nor are they necessarily indicative of atypical selling practices.[84] For the foregoing reasons, Bolong requests that the Department discontinue its preliminary line of reasoning and reinstate its review of Bolong's U.S. sale.

The petitioner agrees with the Department's preliminary analysis, and, thus, it contends that the Department should rescind the NSR. The petitioner points out that Bolong does not dispute any of the facts in this analysis, but rather it attempts instead to explain each of them as a reasonable commercial practice. According to the petitioner, the Department found Bolong's prices to be lower than those changed by the respondents in the administrative review or paid to other unaffiliated suppliers. Further, the petitioner points out that Bolong incurred movement expenses typical of CEP sales, and, thus, it implies that Bolong's argument regarding EP/CEP price differences is not valid. Finally, the petitioner disagrees that the discrepancies in the invoice formats noted by the Department are meaningless, in light of the fact that one of them relates to price; thus, the petitioner maintains that, as a result, it is impossible to know the actual net price received for Bolong's products. Consequently, the petitioner requests that the Department continue to find Bolong's sale not to be bona fide.

Department's Position:

Pursuant to section 751(a)(2)(B)(iv) of the Act,[85] any weighted-average dumping margin determined in a NSR must be based solely on bona fide sales during the period of review. Where a review is based on a single sale, exclusion of that sale as non-bona fide necessarily must end the review.[86]

To determine whether a sale in a new shipper review is bona fide, the Department considers, depending on the circumstances surrounding such sales:

> (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

[83] See Bolong's August 22, 2016, case brief (Bolong's Case Brief), at 8 (citing 19 CFR 351.214 (2014); and Notice of Final Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 71 FR 43444 (August 1, 2006) (WLP from Turkey) and accompanying Issues and Decision Memorandum, at Comment 1).

[84] See WLP from Turkey, and accompanying Issues and Decision Memorandum, at Comment 1.

[85] On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016), (Trade Enforcement Act), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.

[86] See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (TTPC).

> 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.[87]

In examining the totality of the circumstances, the Department looks to whether the transaction is "commercially unreasonable" or "atypical of normal business practices."[88]

Although some bona fide issues may share commonalities across various Department cases, the Department examines the bona fide nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.[89] In TTPC, the U.S. Court of International Trade (CIT) affirmed the Department's practice of considering that "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,"[90] and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale."[91] Moreover, the Department's practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order.[92] Thus, a respondent is on notice that it is unlikely to establish the bona fides of a sale merely by claiming to have sold in a manner representative of its future commercial practice.[93]

After analyzing the information on the record provided by Bolong, we continue to find that Bolong's reported U.S. sale is not bona fide. As we noted in the Preliminary Results, we found that all of the factors noted above – except the expenses arising from the sale -- call into question whether the sale is indicative of normal business practices.[94] Specifically, we found that Bolong made one sale to the United States to a company headed by a longstanding acquaintance willing "to act as an importer of record" for Bolong;[95] we also found that the prices and quantities for the products sold to this customer were not in line with that customer's typical purchases from unaffiliated suppliers.[96] Moreover, the majority of the contact between the parties related to the

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[87] See section 751(a)(2)(B)(iv) of the Act.

[88] See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (New Donghua) (citing Windmill Int'l Pte., Ltd. v. United States, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (Windmill)); see also TTPC, 366 F. Supp. 2d, at 1249-50.

[89] See New Donghua, 374 F. Supp. 2d, at 1340, n.5, citing TTPC, 366 F. Supp. 2d at 1260, and Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum, at Comment 2.

[90] See TTPC, 366 F. Supp. 2d, at 1250.

[91] Id., 366 F. Supp. 2d, at 1263.

[92] See New Donghua, 374 F. Supp. 2d, at 1339.

[93] Id.

[94] See Preliminary Results, and accompanying Preliminary Decision Memo, at 4.

[95] See Bona Fides Analysis Memo, at 8-9.

[96] Id., at 4.

U.S. sale, as well as some of the production for it, occurred prior to the establishment of Bolong as an official company, and the customer issued its purchase order to Bolong's predecessor company (implying that the predecessor company was the actual seller).[97] Further, Bolong's owner conducted all business using his personal email account;[98] to date he has not established official channels whereby U.S. customers can locate or contact the company (including no company email address, website, or English-language marketing materials);[99] and no information exists on the record showing that this individual, or any other Bolong employee, has attempted to make additional sales to the United States.[100] Finally, the documentation submitted in support of the new shipper request appears to contain discrepancies,[101] for which Bolong has offered no explanation. Based on these facts, we concluded that Bolong's U.S. sale is not bona fide.

Bolong does not dispute any of the above facts, but instead claims that the Department arbitrarily focused on irrelevant and unnecessary details, while also unreasonably failing to put other details into context. We disagree with Bolong that any of the analysis underlying our conclusion is arbitrary or unreasonable. Rather, we find that our analysis was fully supported by information placed on the record by Bolong itself, as discussed further below.

With regard to price and quantity, Bolong argues that the Department's analysis was not meaningful because the Department compared prices at different marketing stages, it ignored the fact that the prices and quantities were generally within the same range, and it "cherry picked" which data it relied on in reaching its conclusions. Our Bona Fides Analysis Memo states[102]:

> The goal of our bona fide sales analysis in an 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 or quantity that does not reflect the respondent's usual commercial practices. In conducting an NSR, the Department examines the prices and quantities of sales under review to determine if they are based on normal commercial considerations and if they present an accurate picture of a company's typical sales activity. If the Department determines that the prices and quantities are not based on normal commercial considerations or are atypical of the respondent's future sales, the sales may be considered to not be bona fide sales. …

[97] Id., at 5-6.

[98] Id., at 5 and Bolong's Section A Response, at Exhibit 5.

[99] See Bona Fides Analysis Memo, at 9-10.

[100] Id., at 10.

[101] Id., at 6-8. We also found an additional fact related to the method of payment of the sale to be relevant to our analysis. Because Bolong has claimed business proprietary treatment for this information, however, we are unable to discuss it here. For further discussion, see id., at 10.

[102] See Bona Fides Analysis Memo (Public Version), at 3-4 (footnotes and chart omitted). Because the figures used in the Department's analysis are business proprietary information, we are unable to disclose them here. These figures are set forth in the business proprietary version of the cited memo, at the same pages.

> There are two mandatory respondents in the ongoing administrative review covering the same review period (AR28), Changshan Peer Bearing Co., Ltd. (CPZ/SKF) and Yantai CMC. However, neither of these companies made EP sales during the POR and, thus, their U.S. sales databases do not contain transactions at the same marketing stage (e.g., Bolong's U.S. sales database contains the sale to {Bolong's customer}, whereas Yantai CMC's database contains [ ]'s resales to its own U.S. customers). As a result, the prices and quantities for the mandatory respondents' U.S. sales may not be directly comparable to the prices and quantities of Bolong's sale. Nonetheless, because the mandatory respondents had sales of the identical products in the United States, we compared the quantity and unit price of the sale under review to the resale quantities and unit prices. We found that Bolong's price for one of the two products, L44610, did not fall into the range of prices charged be {sic} either CPZ/SKF or Yantai CMC, nor did Bolong's quantity for this product fall into the range of CPZ/SKF's sales quantities. With respect to Bolong's other product, L44649, we found that Bolong's price fell within the range of prices charged by both CPZ/SKF and Yantai CMC, while Bolong's quantity fell within the range of only Yantai/CMC's quantities. …
>
> In addition to resale data, the record also contains information on {Bolong's customer}'s purchases of TRBs during the POR. Among these purchases are three transactions with unaffiliated suppliers, which would be equivalent to EP transactions. Therefore, we compared the price and quantity of these sales to Bolong's U.S. sales. We found that the prices . . . are higher than Bolong's highest price to {Bolong's customer}. We also found that the average quantity of those purchases was . . . only [ ] percent of the quantity that it purchased from Bolong.
>
> These comparisons indicate that the prices of the reported sale are lower, and in some cases significantly lower, that the majority of the prices charged by the mandatory respondents and/or paid by {Bolong's customer} to unaffiliated suppliers. Similarly, with respect to quantity, Bolong's reported quantities were significantly higher than all of CPZ/SKF's sales quantities for the same TRB models, and for the majority of Yantai CMC's sales of those models. Further, as noted above, Bolong's sales quantity was significantly higher than {Bolong's customer}'s purchases from unaffiliated suppliers. We find that this information calls into question whether Bolong's reported sale was based on normal commercial considerations and whether it was representative of the prices and quantities at which Bolong will sell TRBs in the future.

As can be seen from the above analysis, the Department examined Bolong's pricing and quantity data using all information available on the record, which includes a comparison of these data not only to the mandatory respondents' resale data (the first comparison)[103] but also to the

[103] We disagree with Bolong that we found CPZ/SKF's pricing data "preferable to that of Yantai CMC for purposes of comparison." See Bolong's Case Brief, at 3. As noted above, we stated no preference for the data of either company, but rather simply set forth the results of the comparisons. Thus, we disagree that we cherry picked the

customer's purchases from unaffiliated Chinese suppliers (the second comparison).[104] In both cases, we found that Bolong's sales quantities were not in line (sometimes significantly) with the quantities purchased from the other companies, and its prices were generally not comparable either. While we agree with Bolong that some of these differences in the first comparison may be attributable to marketing stage – and we acknowledged as much in the Bona Fides Analysis Memo – we disagree that the exercise is pointless (given that these factors are listed in section 751(a)(2)(B)(iv) of the Act) or that the results should be disregarded altogether.[105] Indeed, we note that Bolong did not address the second comparison at all, and our findings there with respect to price and quantity were similar. As noted above, the Department's goal is to compute dumping margins based on prices and quantities that reflect a respondent's usual commercial practices; in this instance, the information on the record calls into question whether Bolong's current prices and quantities are predictive of its future commercial behavior. When this conclusion is viewed in conjunction with the additional concerns outlined below, we find that this factor weighs against a finding that Bolong's sale was bona fide.

With regard to timing, Bolong argues that the only important fact is that it invoiced, shipped, and received payment for the merchandise, and it was unreasonable for the Department to consider events that happened prior to invoicing in its analysis. Our Bona Fides Analysis Memo states[106]:

> Bolong was not officially established as a company until [ ]. However, prior to this date, the following events occurred: (1) all negotiations for the sale took place; (2) the customer visited the plant; (3) {Bolong's owner} provided the customer with samples of the merchandise; (4) the customer issued a purchase order to the original company, Yongxiang; and (5) production was scheduled and began. Given that significant activity related to the sale occurred before Bolong became a legal entity (including the confirmation of essential sales terms such as price, quantity, and shipping date), it is unclear whether the sale was made by Bolong or Yongxiang.
>
> Moreover, Bolong's response indicates that {Bolong's customer} invoiced its U.S. customer prior to receiving the merchandise itself, and the shipment date on {Bolong's customer's} invoice was the date that the merchandise was shipped to {Bolong's customer's} address in [ ] from China. This apparent discrepancy in the shipping documentation further calls into question the bona

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data used in our analysis. In any event, we find Bolong's objection to the Department's "preference" for CPZ/SKF's data inconsistent, in light of the fact that: 1) we found Bolong's expense data not to be extraordinary or unusual after comparing these data only to CPZ/SKF's; and 2) Bolong voiced no objection there.

[104] We note that Bolong's argument ignores these latter comparisons.

[105] Indeed, we note that the Department has precedent for these types of comparisons, given that, in other NSRs, the Department has made comparisons of pricing and quantity data for NSR respondents and respondents in the same administrative or even previous administrative reviews. See, e.g., 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 5; and 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.

[106] See Bona Fides Analysis Memo (Public Version), at 6-7 (footnotes omitted).

> fide nature of the sale. For further discussion of {Bolong's customer}'s invoice, see the "Whether the Goods Were Resold at a Profit" section, below.
>
> Finally, the Department has determined in other cases, that the fact that a sale of subject merchandise fell towards the end of the POR does not necessarily indicate that the sale was not a bona fide sale. In explaining one such determination, the Department noted that "there is no indication that the merchandise was shipped … solely to ensure that it entered the United States before the end of the POR." Here, however, the atypical characteristics of the sale, which are explained in detail above, coupled with the fact that the sale was made towards the end of the POR, raise concerns that this transaction may not be indicative of normal commercial practices.

We disagree with Bolong that all events occurring prior to invoicing are irrelevant to the Department's analysis. As noted above, significant sales and production activity occurred prior to Bolong's receipt of its business license,[107] such that there is an open question as to whether Bolong, or its predecessor Yongxiang (a company at which Bolong's owner held a significant position),[108] was the entity making the sale to the United States. In fact, the majority of the contact between Bolong and the customer (including all price negotiations, plant visits, purchase order activity, and development and implementation of the production schedule) was conducted by Bolong's owner while he was actively employed by Yongxiang. Further, the record contains contradictory information with respect to the details of the sale itself because Bolong reported that the TRBs in question were shipped from China and the United States on the same date[109] (a physical impossibility, on which Bolong does not comment). Finally, we note that Bolong's sale entered the customs territory of the United States only a few days prior to the end of the POR, a consideration found relevant when determining whether to rescind NSRs in other proceedings.[110] When these factors are viewed in combination, we disagree that the fact pattern set forth above is "usual" or "typical" of a normal commercial transaction, and, thus, the timing of the sale also weighs against a finding that this sale is bona fide.

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[107] We take no position on Bolong's statement that it is legal under Chinese law to conduct sales activities prior to the receipt of a business license, given that there is no record evidence to support or contradict this statement. However, Bolong's argument misses the central point – that, for dumping purposes, the Department evaluates a company's sales process in its entirety, and, that where that sales process is unusual or atypical of a normal commercial transaction, the Department takes these facts into account in its bona fides analysis.

[108] See Bolong's December 30, 2015, response (Bolong's Supplemental A and C Response), at 1, where Bolong indicates that its owner, Mr. Yang, was the Deputy General Manager responsible for sales at Yongxiang, and thus was effectively "the sales manager in responsibility."

[109] See Bolong's Section A response, at Exhibit 5; and Bolong's May 12, 2016, Supplemental A and D Response, at Exhibit SA-7.

[110] See, e.g., 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, 81 FR 55090 (September 14, 2015) and accompanying Issues and Decision Memorandum, at 15; and Certain Preserved Mushrooms from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 82 FR 1317 (January 5, 2017) and accompanying Issues and Decision Memorandum for Final Rescission, at Comment 2.

Regarding the profitability of the resale, Bolong argues that the Department unreasonably did not end its analysis after finding that Bolong's customer made a profit, but instead focused on irrelevant differences in documents on the record. As set forth in the Bona Fides Analysis Memo, we found that Bolong's customer resold the TRBs in question at a higher price than it paid for them, and, thus, we estimated that it made a profit.[111] In addition, because the administrative record contained additional invoices from the U.S. customer, we examined these invoices in an attempt to determine whether they contained similar resale prices.[112] While we found that the prices were indeed generally the same, we also found that the two invoice formats were not identical in all respects.[113] Specifically, we noted that: 1) the format of the dates is different; and 2) the column headings are different and in a different order.[114] We found these differences to be curious, particularly in light of the fact that: 1) the resale invoice provided in this NSR and one of the two comparison invoices were issued one month apart; and 2) Bolong's customer used the same date and column heading formats in both comparison invoices (but not in the resale invoice submitted in this review).[115] Therefore, we concluded:[116]

> Normally, documentation showing that the merchandise was resold at a profit would support a finding that the sale under consideration is bona fide. However, as with the shipping dates noted in the "Timing of the Sale" section above, the apparent discrepancies in the invoice formats call into question the bona fide nature of the sale.

We disagree with Bolong that it is unreasonable for the Department to examine additional information on the record after finding that Bolong's TRBs were resold at a profit, or that the analysis performed by the Department is separate and apart from the task at hand. As noted above, neither Bolong, nor Bolong's customer, provided expense information necessary to determine whether the customer made a net profit on the sale. Indeed, it would be remiss of the Department to ignore potentially corroborative information existing on the record, especially given that Bolong's submitted data relates to gross profit alone.

We further disagree that the differences observed in the invoice formats are not meaningful. While these invoices do share some similarities, we find it unusual (at best) that their formats are not identical, particularly in light of: 1) the proximity in time between which the resale invoice and one of the comparison invoices were generated[117]; and 2) these invoices appear to be created

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[111] See Bona Fides Analysis Memo (Public Version), at 7. We noted, however, that, Bolong did not provide its customer's selling or movement expenses incurred to resell the product to its U.S. customer. Id. As a result, the "profit" figures stated in this memo are gross profit figures, not the actual net amount realized or earned by the customer.

[112] Id., at 7-8.

[113] Id.

[114] Id. We also note that the product description differs between the resale and comparison invoices. Because these invoices have been accorded business proprietary treatment, we are unable to discuss these differences further. For additional details, see Bona Fides Sales Analysis Memo, at Attachment II.

[115] Id., at 8.

[116] Id.

[117] Specifically, the resale and most recent comparison invoice were issued approximately one month apart. Id.

using accounting software or a computer program (which may have a standard invoice template). Further, as noted above, the resale invoice contains a shipping date discrepancy (i.e., the merchandise is shipped from the Chinese port and the U.S. port on the same date), which calls into question the validity of that document. Finally, although Bolong claims that there are possible reasons for the differences at issue, it provides no such reasons for the Department's consideration.

As the CIT has explained:

> 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 . . . 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.[118]

Regarding the "arm's-length" criterion, Bolong argues that the Department should limit its analysis to the fact that Bolong and its customer are unaffiliated, and disregard the fact that Bolong's owner has a longstanding personal relationship with a senior employee of the U.S. customer. However, in our Bona Fides Analysis Memo, we found that this personal connection was pivotal to the sale, given that Bolong's owner reached out to this individual to ask if he would buy TRBs from Bolong because of it.[119] Specifically, Bolong's response states:[120]

> Mr. [ ] has been acquainted with Mr. [ ] for many years; they have a good personal relationship and confidence in the operations and management of the company. In addition, it is difficult for a newly established company to become an importer of record in the United States. Therefore, Mr. [ ] agreed for [ ] to act as the importer of record.

After analyzing the circumstances surrounding the establishment of the sale, including the use of personal email to correspond, and an extremely limited discussion between the parties of the price and antidumping duty liability, we concluded that the sale was made directly as a result of the above-noted personal relationship, and, thus, it may not be "typical of those {sales} which the producer will make in the future" (i.e., representative of Bolong's normal commercial practice).[121]

Contrary to Bolong's claim, our analysis did not rely solely on the fact that the principals of the two companies are acquainted, or that they were not "indifferent strangers." Instead, we found that the actions of these two parties were affected by their relationship in a manner that calls into question the arm's-length nature of the sale.[122] For example, we find Bolong's word choice in the quote set forth above to be meaningful – the customer agreed "to act as the importer of

[118] See TTPC, 366 F. Supp. 2d, at 1257.

[119] See Bona Fides Analysis Memo, at 8.

[120] See Supplemental Section A and C Response (Public Version), at Exhibit S-21 (emphasis added).

[121] See Bona Fides Analysis Memo, at 8-9.

[122] Id., at 9.

record" because Bolong was a "newly established company" (i.e., he was performing a favor based on the personal relationship), rather than agreeing to purchase goods as part of a normal commercial transaction. In the same vein, we find it meaningful that the customer, as importer of record, is liable for any assessed dumping duties. However, the discussion of this aspect of the transaction, potentially involving tens of thousands of dollars, was cursory at best (i.e., there were only two sentences and one question on the part of the customer, and a four-sentence answer by Bolong, containing no specific information to address the customer's query).

In light of the foregoing, we disagree that it would be appropriate to disregard the personal relationship in this case. Indeed, as noted above, this customer purchased TRBs from Bolong in significantly higher quantities than it did from other unaffiliated suppliers, contributing to the appearance that personal considerations played a role in this transaction. Thus, we have no confidence that this sale is representative of Bolong's future sales, made without personal connections.

Finally, Bolong argues that the Department should not consider any additional factors in the analysis. However, we find it highly relevant that: 1) Bolong does not have a website, email address, or a product catalog; and 2) it made only a single sale to United States during the POR; and 3) it has neither made any additional U.S. sales since nor attempted to identify additional U.S. customers.[123] As we noted in the Bona Fides Analysis Memo:[124]

> {It} is clear that Bolong does not have a mechanism in place to make future sales of subject merchandise to the United States.[125] For example, Bolong does not appear to be actively contacting U.S. customers, nor has it asked {Bolong's customer} to purchase additional TRBs (despite the fact that {Bolong's customer} may be able to resell them for a profit). Further, Bolong has established no channels for U.S. customers of TRBs to contact Bolong directly, given that Bolong has no English-language marketing materials or product catalogs, no internet presence, and no an {sic}email address.

These circumstances are not typical of a company interested in doing international business and call into question whether the company operates under a normal commercial basis. Similar circumstances have contributed to the Department's finding of non bona fide sales in NSRs in other proceedings.[126]

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[123] See Bona Fides Analysis Memo, at 9. As noted above, we also found an additional fact related to the method of payment of the sale to be relevant; however, because this fact is not public, we are unable to discuss it here. We did find this fact to be commercially unusual and to contribute to our conclusion that the sale is not a bona fide commercial transaction, and we note that Bolong made no arguments to address this concern. For further discussion, see id., at 10.

[124] Id. (Public Version), at 10.

[125] See Section A Response, at 14, where Bolong stated that "during the POR, Bolong did not have a systematic process in place to identify U.S. customers," and there is no evidence on the record that this has changed after the POR.

[126] See, e.g., Notice of Rescission of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China, 71 FR 37902, 37903 (July 3, 2006) (where the circumstances surrounding the single POR sale and its negotiation were unusual); 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) (Garlic) and accompanying Issues and Decision Memorandum, at Comment 2 (finding the fact that the respondent had no means to conduct

We disagree with Bolong that the Department should disregard the fact that Bolong made only a single sale during the POR. As the CIT stated in Windmill:[127]

> While plaintiff's reliance on a single sale need not be fatal, a single sale leaves little to review. Tianjin, 29 CIT at 275, 366 F. Supp. 2d at 1263. 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. This leaves the door wide to the possibility that the sale may not, in fact, be typical, and that any resulting antidumping duty calculation would be based on unreliable data.
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> As to Chenhe's legal argument that its shipment must be found "extremely distortive" in order for it to be rejected, the company seeks to set the bar too high. The purpose of a new shipper review is to determine if an exporter or producer is entitled to a separate rate and to set that rate. In order for Commerce to set an accurate rate, it must have before it a transaction from which it can reasonably determine a margin. Thus, a single transaction need not be "extremely distortive" in order to be found unsuitable. Rather, to be used as a basis for setting an individual rate, a sale must be typical of normal business practices.

In line with this ruling, because Bolong only made a single sale during the POR, the Department has carefully scrutinized that transaction in making a finding as to its bona fides. This careful scrutiny is consistent with the intent of section 751(a)(2)(B)(iv) of the Act, which was enacted to curb what Congress viewed as abuse of the NSR provision of the statute. In particular, in enacting section 751(a)(2)(B)(iv) of the Act, Congress expressed concern that NSRs were being abused to secure low cash deposit rates that are not reflective of the new shipper's future commercial behavior.[128] Where the Department has one sale to review in an NSR, and that sale is determined to be non-bona fide, we are required to rescind the review.

In summary, in determining whether a sale is a bona fide commercial transaction, the Department examines the totality of the circumstances of the sale in question.[129] If the weight of the evidence indicates that a sale is not typical of a company's normal business practices, the sale

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business internationally for at least six weeks calls into question whether the company operates on a normal commercial basis).

[127] See Windmill, 193 F. Supp. 2d 1303, 1313.

[128] In the drafting of the Trade Enforcement Act, the House of Representative's Ways and Means Committee noted it "is concerned that the ability of new exporters and producers to obtain their own individual weighted average dumping margins or individual countervailing duty rates from the Department of Commerce on an expedited basis (known as 'new shipper reviews') has been abused to avoid antidumping and countervailing duties." See H. Rpt. No. 114-114 (2015), at 89.

[129] See, e.g., Certain Cut-to-Length Carbon Steel Plate From Romania: Notice of Rescission of Antidumping Duty Administrative Review, 63 FR 47232, 47234 (September 4, 1998) (CTL Plate from Romania); and Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decision Memorandum, at Comment 8.

is not consistent with good business practices, or the transaction has been so artificially structured as to be commercially unreasonable, the Department finds that it is not a bona fide commercial transaction and must be excluded from review.[130] In this instant case, the record evidence shows that the following factors call into question whether the sale is indicative of normal business practices: 1) price and quantity of the sale; 2) the timing of the sale; 3) the means by which, and to whom, the sale was made; 4) the fact that Bolong does not have a company website, email address, or product catalogs, and is not attempting to make additional U.S. sales; 5) the method of payment of the sale; and 6) the other atypical circumstances surrounding the sale. Thus, when factoring in the totality of the circumstances, we find that Bolong's single sale is non-bona fide.

[130] See CTL Plate from Romania, 63 FR at 47234.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of the administrative review and the final weighted-average dumping margins for the reviewed firms in the Federal Register. We will also publish a final rescission of the NSR in the Federal Register.

☒ ☐

Agree Disagree

Recoverable Signature

X 

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance