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May 26, 2017

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results and the Partial Rescission of the 2014-2015 Antidumping Duty New Shipper Reviews: Multilayered Wood Flooring from the People's Republic of China

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SUMMARY

The Department of Commerce (the Department) analyzed the case brief submitted by Zhejiang Simite Wooden Co., Ltd. (Simite Wooden) in the antidumping duty new shipper reviews (NSRs) of multilayered wood flooring (wood flooring) from the People's Republic of China (PRC). Based on our analysis of the comments received, we continue to find Simite Wooden's single sale to be non-*bona fide*. We also continue to find that Jiangsu Keri Wood Co., Ltd. (Keri Wood) made a single bona fide sale which was not below normal value (NV) and that it is eligible for a separate rate. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On December 20, 2016, the Department issued the *Preliminary Results* of these NSRs for the period December 1, 2014, through November 30, 2015.[1] On January 26, 2017, the Department

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[1] *See Multilayered Wood Flooring From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Reviews; 2014-2015*, 81 FR 95566 (December 28, 2016) (*Preliminary Results)*; *see also* Memorandum to Abdelali Elouaradia, Director, Enforcement and Compliance, Office IV, from Maisha Cryor, International Trade Compliance Analyst, Enforcement and Compliance, Office IV entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Preliminary Bona Fide Sale Analysis for Zhejiang Simite Wooden Co., Ltd., dated December 20, 2016 (Simite Wooden Prelim Bona Fide Memo); Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and

did the following: 1) placed additional information on the record related to the Department's calculation of international freight in the *Preliminary Results*;[2] 2) issued a supplemental questionnaire to Keri Wood regarding its third country sales;[3] and 3) extended the case brief and rebuttal brief deadlines for all interested parties.[4] On January 31, 2017, the Department granted Keri Wood an extension to provide its supplemental questionnaire response.[5] On February 7, 2017, due to Keri Wood's supplemental questionnaire response extension, the Department granted all parties an additional extension of time for the submission of case and rebuttal briefs.[6] On February 13, 2017, Keri Wood submitted its supplemental questionnaire response.[7] On February 17, 2017, the Department received a case brief from Simite Wooden.[8] No other party submitted comments. On May 3, 2017, the Department met with counsel for Simite Wooden where counsel presented issues raised in its case brief.[9] On May 22, 2017, Simite Wooden rescinded its request for a hearing.[10]

SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, "engineered wood flooring" or "plywood flooring." Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without

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Compliance, "Decision Memorandum for Preliminary Results and Rescission, In Part, of Antidumping Duty New Shipper Reviews, 2014-2015: Multilayered Wood Flooring from the People's Republic of China," dated December 20, 2016 (*Preliminary Decision Memorandum*).

[2] *See* Memorandum to the File, Regarding "New Shipper Reviews of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – International Freight Calculation," dated January 26, 2017 ("International Freight Memo").

[3] *See* Letter to Keri Wood, Regarding "New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Supplemental Questionnaire, dated January 26, 2017.

[4] *See* Memorandum to the File, Regarding "New Shipper Reviews of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Notification of Extension of Deadline for the Submission of Case Briefs and Rebuttal Briefs," dated January 26, 2017.

[5] *See* Letter to Keri Wood, Regarding "Multilayered Wood Flooring from the People's Republic of China: Deadline Extension for Supplemental Questionnaire," dated January 31, 2017.

[6] *See* Memorandum to the File, Regarding "New Shipper Reviews of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Notification of Extension of Deadline for the Submission of Case Briefs and Rebuttal Briefs," dated January 26, 2017.

[7] *See* Letter from Simite Wooden to the Secretary of Commerce, "Multilayered Wood Flooring from the People's Republic of China: Section D Supplemental Questionnaire Response," dated February 13, 2017.

[8] *See* Letter from Simite Wooden to the Secretary of Commerce, "Multilayered Wood Flooring from the People's Republic of China; A-570-970; New Shipper Review of Zhejiang Simite Wooden Co., Ltd.; Case Brief," dated February 17, 2017 (Simite Wooden Brief).

[9] *See* Memorandum to the File, Regarding "New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Ex Parte Meeting with Counsel to Zhejiang Simite Wooden Co., Ltd.," dated May 4, 2017.

[10] *See* Letter from Simite Wooden to the Secretary of Commerce, "Multilayered Wood Flooring from the People's Republic of China; A-570-970; New Shipper Review of Zhejiang Simite Wooden Co., Ltd; Withdrawal of Request for Hearing and Closure of Portion of Hearing, dated May 22, 2017.

regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120;

4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

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

DISCUSSION OF THE ISSUES

In the preliminary results of these NSRs, the Department determined that Simite Wooden's single sale during the period of review (POR) was not a *bona fide* sale pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214. Therefore, the Department preliminarily rescinded the NSR with respect to Simite Wooden. Simite Wooden submitted comments on the Department's preliminary results, and those comments are discussed below.

Comment 1: Whether the Department's Calculation of Ocean Freight was Incorrect

- The Department's ocean freight calculation failed to ensure that the data for similar units were used in the calculation. The calculation was based upon a different unit of measure than Simite Wooden's sale.
- The values of the ocean freight calculation must be adjusted to ensure that the comparisons are based on similar units.
- The Department's calculation appears to include lines where ocean freight was not incurred.
- The Department failed to provide its full calculations performed in connection with the preliminary results pursuant to 19 CFR 351.224.
- The Department should have used, and placed on the record, a public value as the surrogate for ocean freight and not third-party business proprietary information (BPI) in accordance with its "normal" practice stated in 19 CFR 351.408(c)(i). The use of third-party BPI in this instance deprives Simite Wooden of its ability to participate in the review.

Department's Position: We agree with Simite Wooden that the Department made an error related to the unit of measure when calculating ocean freight. We have corrected this error for these final results by converting the ocean freight unit of measure to square meters.[11] In addition, we removed lines from the calculation where ocean freight was not incurred.[12] However, we disagree with Simite Wooden that the Department did not release its calculation regarding ocean freight. As an initial matter, the release of "calculations" under 19 CFR 351.224 is applicable to situations where the Department calculates a dumping margin or subsidy rate, not to the Department's *bona fide* analysis in a NSR.[13] Nevertheless, in the Simite Wooden Prelim

[11] *See* Simite Wooden Final Calculation Memorandum: Final Results of New Shipper Review, dated May 26, 2017.
[12] *Id.*
[13] *See, e.g.*, 19 CFR 351.224(d) (providing that comments under this subsection concerning a preliminary determination must demonstrate how the alleged ministerial error affects the dumping margin or subsidy rate).

Bona Fide Memo, the Department explained that it was estimating Simite Wooden's international freight expense by using the average per unit cost incurred by a respondent from the third administrative review (AR3).[14] While the Department inadvertently neglected to include the calculation of this estimation when disclosing the calculations in connection with the *Preliminary Results*, the Department did explain its methodology and provided the actual estimated BPI international freight value in the Simite Wooden Prelim *Bona Fide* Memo.[15] On January 26, 2017, we placed an excel spreadsheet containing the calculation for ocean freight on the record of this proceeding.[16] The electronic version of the excel spreadsheet contained each individual line item of international freight, as well as the calculation averaging the international freight data, with a result that matched the calculated international freight value reported in the Simite Wooden Prelim *Bona Fide* Memo .[17]

Further, we also disagree with Simite Wooden that the use of a BPI ocean freight value deprived it of the ability to participate in the review. First, the Department placed this BPI information on the record of this proceeding as part of the sales listing from AR3.[18] Second, section 351.306(b) of the Department's regulations provides that an authorized applicant may use BPI for purposes of the segment of a proceeding in which the information was submitted. Third, Simite Wooden's counsel applied for and was granted access to examine the BPI data under its administrative protective order (APO). Therefore, Simite Wooden was able to fully view and analyze the BPI ocean freight data. Simite Wooden acknowledged this fact itself in its case brief by stating that "certain information contained in this submission is third party BPI released to counsel for Simite pursuant to an administrative protective order." In fact, Simite Wooden's counsel appears to have examined the BPI ocean freight information as an analysis of these data was included in Simite Wooden's case brief. Moreover, the Department has considered and rejected similar arguments in past NSRs.[19] Therefore, we find that Simite Wooden was not deprived of the ability to participate in the review.

Lastly, Simite Wooden cites to section 351.408(c)(1) of the Department's regulations as support for its argument that the Department should have used a public value as the surrogate for Simite Wooden's ocean freight expense.[20] However, that particular regulation refers to the "valuation of factors of production," and not to a price estimation for a *bona fide* sale analysis. Therefore, we do not find that regulation to be controlling in this instance. In addition, the BPI ocean freight value was the only information on the record of this proceeding. Therefore, we had to use it to value ocean freight as it was the only information available.

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[14] *See* Simite Wooden Prelim *Bona Fide Memo* at page 4, footnote 29.
[15] *Id.*
[16] *See* Memorandum to the File, Regarding "New Shipper Reviews of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – International Freight Calculation," dated January 26, 2017.
[17] *Id*.
[18] *See* Memorandum to the File, Regarding "New Shipper Reviews of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – US Sales Data from the Third Administrative Review," dated September 8, 2016.
[19] *See 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) (*MLWF 14-15 NSR*) and accompanying Issues and Decision Memorandum (MLWF 14-15 NSR Memo) at Comment 5.
[20] *See* Simite Wooden Brief at 6.

Comment 2: Whether the control number used by the Department for comparison purposes was the best match

- The Department states that it compared Simite Wooden's control number (CONNUM) to a control number that was sold by Dalian Penghong Floor Products Co., Ltd. (Penghong) during AR3. Although the Department claimed that it selected this CONNUM because it only differed by two product characteristics, Penghong reported an additional product characteristic, so the CONNUM actually differed from the Simite product by three characteristics.
- The identity of this additional product characteristic is not on the record and the Department did not note that the Penghong CONNUM had an additional characteristic.
- The sales database for Fine Furniture (Shanghai) Limited (Fine Furniture), another POR respondent, contains one CONNUM that only differs from Simite Wooden's CONNUM by two characteristics and contains two control numbers that differ from Simite Wooden's CONNUM by three product characteristics, just like the selected Penghong CONNUM.
- Fine Furniture's CONNUMs are a better match for comparison purposes because one is a closer match (differing by only two product characteristics) than Penghong's and two are the same distance apart from Simite Wooden's CONNUM as the Penghong CONNUM used by the Department in the *Preliminary Results.*
- The Department must expand its analysis to include the CONNUM by Fine Furniture that only differs by two product characteristics.
- Simite Wooden contends that the Department must disclose the reasons it selected the CONNUM in question prior to the final determination and provide Simite Wooden an opportunity to comment.

Department's Position: We disagree with Simite Wooden that the Penghong CONNUM does not reflect the most similar product. In the Simite Wooden Prelim *Bona Fide* Memo, the Department explained how it determined that products sold by Penghong were the most similar to Simite Wooden's product and, therefore, the best selection as the comparison product.[21] Specifically, the Department compared the CONNUM sold by Simite Wooden to the CONNUMs sold by Penghong and Fine Furniture. As Simite Wooden itself noted, Penghong's CONNUMs match on the two highest ranked hierarchal product characteristics, veneer type and veneer thickness.[22] Generally, when constructing CONNUMs, "the Department attempts to list the most important physical characteristics first…."[23]

A review of the record evidence indicates that Simite Wooden and Fine Furniture's CONNUMs matched on fewer of the hierarchal product characteristics than Penghong and Simite Wooden's CONNUMs.[24] Specifically, Simite Wooden's and Penghong's CONNUMs matched on the first

[21] *See* Simite Wooden Prelim Bona Fide Memo.
[22] See Simite Wooden Brief at 9; *see also* Simite Wooden Prelim Bona Fide Memo at 3-4.
[23] *See Multilayered Wood Flooring From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 75 FR 70714, 70715 (November 18, 2010) ("*MLWF Initiation").*
[24] *Id*.

two product characteristics of the CONNUM,[25] whereas Simite Wooden and Fine Furniture's CONNUMs only matched on the first product characteristic. Therefore, while Simite Wooden and some of Fine Furniture's CONNUMs may have also only differed by two product characteristics, the hierarchy of the matching product characteristics is important in determining the similarity of the products.

As noted above, Simite Wooden and Penghong's CONNUMs matched on the first two product characteristics which means that those products are more similar than the products sold by Fine Furniture. For this reason, we do not agree with Simite Wooden that we should "expand our analysis" to include the Fine Furniture CONNUM. Regarding the additional product characteristic reported by Penghong at the end of its CONNUM, the Department did not include this information in its analysis of Penghong's CONNUM because it was not part of the Department's official CONNUM criteria. The Department established the product characteristics of the CONNUMs and their hierarchies in the investigation of this proceeding and we have not since changed the product characteristics, nor has any interested party requested that the Department do so. Therefore, while Penghong provided an additional characteristic on its own for informational purposes in the prior review, it was not germane to the Department's analysis in this instant proceeding because the information represented by that additional product characteristic is not something the Department considers as part of the established product characteristics of the CONNUM criteria. For these reasons, we continue to find that Penghong sold the most similar product to Simite Wooden.[26]

Regarding Simite Wooden's request that the Department disclose the reasons it selected additional CONNUMS and provide it with a chance to comment before the final results, we find this request to be without merit because, as discussed above, the Department is continuing to use the same CONNUM as used in the *Preliminary Results*, and Simite Wooden has had the opportunity to comment, as reflected in its case brief.

Comment 3: Whether the Department should further adjust the prices of Penghong and Fine Furniture in making a comparison

- The Department did not adjust AR3 prices upwards to reflect the increase in price between the subject merchandise then and the current POR.
- The Department claims, without support, that there was no record evidence to support an upwards adjustment for inflation. However, Simite Wooden placed the producer price index on the record showing an upward adjustment of prices from AR3 to the current POR.
- The Department must adjust the comparison prices to reflect inflation because the Department makes such adjustments to surrogate values in its margin calculations.
- If the Department continues to use the Penghong CONNUM for comparison purposes, it should adjust the Penghong data by an examination of the factors of production (FOP) and the cost of the goods. This would enable a comparison to the price of the Simite

[25] The information represented by Simite Wooden and Penghong's CONNUMs is business proprietary. *See* Simite Wooden Prelim Bona Fide Memo at 3-4 for the BPI comparison of Simite Wooden and Penghon's CONNUM demonstrating that their CONNUMs match on the first two product characteristics.
[26] *Id*.

Wooden goods, as calculated using its factors of production and ascertain the adjustment that should apply for differences in the quality of the goods.

- The Department should adjust Fine Furniture's constructed export price by adding and subtracting various expenses to take it to an FOB basis. The Department should adjust for antidumping and countervailing deposit rates in effect during AR3.
- Fine Furniture's prices must be increased to reflect the fact that Fine Furniture was found to be dumping in AR3 at a rate in excess of 13 percent. The Department should compare Fine Furniture's prices to the price of Simite Wooden's sale only after increasing Fine Furniture's price by at least an upward adjustment of 13 percent.
- In a previous NSR, the Department relied on *Hebei New Donghua Amino Acid Co. v. United States, 374 F. Supp. 2d 1333 (2005)* (Hebei) to support not adjusting for duties. However, *Hebei* referred to contingent amounts while dumping duties are actual expenses. An adjusted price for Fine Furniture for the CONNUM closest to Simite Wooden demonstrates that Simite Wooden's price was *bona fide* and not abnormally high.

Department's Position: We disagree with Simite Wooden that Penghong's sale price should be adjusted further. As an initial matter, it is important to recognize that the Department's analysis in the context of a *bona fide* analysis is different than in a dumping analysis. In a *bona fide* analysis, we are examining each sale for its commercial reasonableness, and are not attempting to ascertain the fair value of the merchandise. Thus, the Department's practice is to not inflate sale prices between comparison periods for purposes of conducting a NSR analysis.[27] Moreover, as stated in the *Preliminary Results,* we continue to find that Simite Wooden has not demonstrated that the price of subject merchandise has increased between AR3 and the POR at issue.[28] Thus, Simite Wooden has not shown that the consumer price index is an appropriate index to use to inflate sale prices of subject merchandise.[29]

We also disagree with Simite Wooden that we should adjust Penghong's data by FOPs and the costs of goods sold. The Department's *bona fide* sale criteria sets out the framework that the Department should follow to analyze the commercial nature of sales in NSRs.[30] Specifically, to determine whether a sale in a NSR is *bona fide*, one factor the Department considers is the "price" of the sales.[31] Nowhere in the criteria and framework used to analyze the *bona fide* nature of NSR sales is the Department required to look past the sale price to make adjustments for FOPs and costs of goods sold.[32] We also note that Simite Wooden has neither provided citations of past cases where the Department has made such adjustments when analyzing the price data of a NSR sale nor suggested how the Department could use such information to adjust Penghong's sale price. Further, information related to Penghong's FOPs and cost of the goods sold is not on the record of this NSR so the Department cannot make the requested adjustments. Third, as discussed above in Comment 2, the Department is continuing to use Penghong's, and

[27] *See* MLWF 14-15 NSR Memo at page 6.
[28] The Department notes that, at the time of issuance of our preliminary results, AR3 was the most recently completed review of this order.
[29] Moreover, even if we made the requested inflation adjustment to the AR3 prices, it would not change the Department's ultimate conclusions regarding Simite Wooden's price.
[30] *See* Simite Wooden Prelim Bona Fide Memo at 2.
[31] *Id.*
[32] *Id*.

not Fine Furniture's, CONNUM for comparison purposes. Therefore, Simite Wooden's arguments regarding adjustments to Fine Furniture's sale price are moot.

Comment 4: Whether Simite Wooden's sale price is within the range of the minimum and maximum prices of the AR3 respondents and is reasonable

- Fine Furniture's adjusted and unadjusted sales data establishes that numerous sales were made at prices exceeding those of Simite Wooden.
- Citing *Off-the-Road Tires from the PRC* and a prior wood flooring NSR, Simite Wooden argues that it is the Department's practice to conclude that the price of a new shipper is *bona fide* when it falls within the range of the minimum and maximum prices of other respondents, even if such price falls toward the higher end.

Department's Position: We disagree with Simite Wooden. As an initial matter, as noted above in Comment 2, the Department is not using Fine Furniture sales for comparison purposes because those sales are less similar than other sales on the record. Therefore, for these final results, we have continued to compare Simite Wooden's sale to the most similar product from AR3 and not the range of all prices sold by other respondents. Moreover, as discussed above in Comment 2, Simite Wooden's sale price is higher than the comparison sales. That is, once the Department matches as many product characteristics as possible in the price comparison (and taking into account the hierarchy of product characteristics for purposes of finding a match), record evidence demonstrates that Simite Wooden's sale price is atypical.[33] Thus, contrary to Simite Wooden's assertion, the Department's analysis of Simite Wooden's sale price in this NSR indicates that the price is not within the range of minimum and maximum prices of other respondents with the most comparable sales.[34] For this reason, Simite Wooden's arguments are moot.

In any event, we disagree with Simite Wooden's description of the Department's practice. When a new shipper's price is at the high end of a price distribution, the Department has considered this to be a key factor in supporting a finding that the sale was not *bona fide*, even if the sales price falls within the outermost bounds of a price range.[35] Moreover, Simite Wooden's reliance upon *Off-the-Road Tires from the PRC* and a prior NSR in this proceeding is misplaced. The Department has refined its *bona fide* sales analysis since those proceedings and now seeks to find the most similar merchandise sold by other respondents, as opposed to comparing the NSR sale

[33] *See* Simite Wooden Prelim Bona Fide Memo.

[34] *See* Simite Wooden Prelim Bona Fide Memo at 3-4; *see also* Simite Wooden Case Brief at 9.

[35] *See, e.g.,* C*ertain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 17 (noting that where a new shipper's entry "ranked as one of the highest prices" when compared to a range of comparison prices, this supported a non-*bona fide* finding); *see also* Memorandum to the File, "Multilayered Wood Flooring from the People's Republic of China: Zhangshi and Muyun New Shipper Reviews – Department Practice," dated October 17, 2016 (Dept. Practice Memo), Attachment 1 at 3 (finding price to be atypical when the new shipper's sales prices were within the range of comparison prices for one product and outside the range of comparison prices for a second product).

to all sales sold during the comparison period.[36] As explained above, when the Department narrows the comparison sale to the most similar merchandise based upon a CONNUM analysis, Simite Wooden's sale price is higher (not just at the high end) than the comparison sales.

Comment 5: Whether physical differences account for price differences

- Simite Wooden sold one type of high quality wood made with high quality inputs; and the Department compared Simite Wooden's product with the AR3 product of unstated quality or production cost.
- The Department failed to place production data on the record and failed to take the production data into account. Also, Simite Wooden notes that it was not able to comment on the quality of the flooring produced by the mandatory respondents.[37]
- The existence of higher priced sales is evidence that higher priced product is sold at a higher price and mere price data alone is not sufficient to how whether a price is bona fide.

Department's Position: The Department disagrees with Simite Wooden. Simite Wooden asserts that the Department failed to take into account the physical differences which might affect price between its product and the merchandise sold in the sales underlying the AR3 comparison data. The Department finds this argument to be inaccurate. As noted above in Comment 2, we specifically examined the products sold by the respondents in AR3 to find the product most similar to Simite Wooden's based upon the hierarchy of product characteristics. As discussed above in Comment 2, the Department determined that Simite Wooden's product was most physically similar to product made by Penghong because the CONNUMs of both companies matched on the first two product characteristics. As noted above, when constructing CONNUMs, the Department attempts to list the most important physical characteristics first.[38] In this way, by matching the first two product characteristics in the CONNUMs, the Department has accounted, to the extent possible, for any physical differences in its price comparison. The Department notes that no party in this proceeding has challenged the hierarchy of the product characteristics. Given that there are no sales of identical products in the AR3 data, the Department used the product characteristics to find the most similar product. Therefore, for the final results, we have continued to use the CONNUM-based comparison to analyze the price differential between Simite Wooden and Penghong.

Comment 6: Whether the totality of the facts indicate that the sale was bona fide

- The record supports a finding that its sale price was bona fide and reflects other prices of similar quality goods. Even if the Department ultimately determines that Simite Wooden's price is higher than those of AR3, this does not require the Department to find its sale non-*bona fide* because price is just one factor to consider in a *bona fide* sale

[36] *See* MLWF 14-15 NSR Memo at Comment 1 (noting that Department specifically examined the comparison prices of other respondents' sales based on the unique CONNUMs established in MLWF proceeding, thus accounting for physical differences in its price comparison).
[37] We address this argument below in Comment 7.
[38] *See* MLWF Initiation 75 FR at 70715.

analysis. The record evidence is that Simite Wooden provided a high quality product which obtained a price premium.

- In the *Preliminary Results,* Simite Wooden notes that the Department found the following: 1) that Simite Wooden's sale was made in commercial quantities; 2) that there were no timing issues with the sale; 3) that there were no unusual expenses underlying the sale; 4) that the sale was made at a profit; and 5) that the sale was made on an arms-length basis.
- Simite Wooden contends that the resale of its merchandise at a profit is an important factor because it is clear evidence that the price was not artificially high because its unrelated customer was able to resell it at a profit.

Department's Position: The Department disagrees with Simite Wooden's assertion that the totality of the facts should lead to a finding that its sale is *bona fide*. While the Department does agree that the record provides evidence demonstrating that Simite Wooden met certain criteria of the Department's *bona fide* sale analysis, the Department does not agree with Simite Wooden's explanation regarding their higher price in comparison with Penghong, *i.e.*, we do not agree that the Department should make further adjustments to Simite Wooden and Penghong's prices to account for the price differential.

The Department finds that Penghong's sales information from AR3 was the most recently completed segment and that the comparison merchandise matched the subject merchandise on numerous and high-ranking hierarchal product characteristics. Additionally, in one-sale reviews such as this NSR, little information can be obtained regarding the seller's future selling practices; and, as such, Simite Wooden's single sale at a higher price for similar merchandise calls into question whether this sale is representative of Simite Wooden's future selling practices.[39] In this instant case, record evidence shows that Simite Wooden had a higher sale price.

Moreover, the Court of International Trade has previously emphasized the importance of a commercially realistic price when determining whether a sale is a *bona fide* sale when, in *TTPC*, it stated that in *bona fide* sales analyses, "the price factor has a significant weight, and cannot necessarily be offset by … other factors by which the sale could be considered typical … The transactions must be 'normal' as a whole, and price must be a large part of what produces 'normal' sales in the context of an antidumping determination."[40] Given the importance of price in determining the *bona fide* nature of Simite Wooden's sale, we find that Simite Wooden's significantly high sales price calls into question whether the sale is indicative of future commercial practice.

Further, in a one-sale review, 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 look like.[41] Therefore, the Department will "carefully scrutinize{}" that sale. This careful scrutiny is consistent with the intent of the recently revised section 751 (a)(2)(B)(iv) of the Act, which was

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[39] *See* Simite Wooden Prelim Bona Fide Memo at 7.
[40] *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (*TTPC), see also Hebei New Donghua Amino Acid Co., Ltd. v. United States,* 374 F. Supp. 2d 1333, 1339 (CIT 2005).
[41] *See TTPC*, 366 F. Supp. 2d at 12.

enacted to curb what Congress viewed as abuse of the NSR provision of the statute.[42] In particular, in enacting the revised section 751(a)(2)(B)(iv) of the Act, Congress expressed concern that new shipper reviews were being abused to secure low cash deposit rates that are not ref1ective of the new shipper's future commercial behavior.[43] Thus, in evaluating the totality of the circumstances surrounding Simite Wooden's sale, we find that the price differential for the single sale also calls into question whether this sale is representative of Simite Wooden's future selling practices.[44]

Comment 7: Whether the Department made procedural errors in conducting this review

- The Department made a number of procedural errors during the course of this NSR.
- The Department failed to provide the calculation of the "adjusted" price for Simite Wooden, and instead simply provided a single column out of context listing of data.
- The Department should have placed additional information on the record concerning the AR3 respondents to allow Simite Wooden to meaningfully comment and compare differences between Simite Wooden's product and the products of the AR3 mandatory respondents, *e.g.*, narrative responses, cost data.
- Specifically, the Department placed on the record the sales databases but did not place on the record the narrative responses. Furthermore, the Department placed no cost data on the record, and such data would be unavailable to Simite Wooden on the Department's ACCESS site.
- The Department placed sales data from AR3 on the record without stating its intended use for the data. Until the *bona fide* analysis was issued, Simite Wooden had no way to know how the Department would use the information and what information would be relevant.
- Although in the *Preliminary Results*, the Department noted that Simite Wooden could have placed relevant information from the public files on the record itself, certain data was not available in the public files and was not available to be placed on the record by Simite Wooden.

Department's Position: We disagree with Simite Wooden's assertion that we made procedural errors in this proceeding. First, Simite Wooden argues that the Department failed to provide the calculation for its adjusted price, by simply providing a single column of data out of context. We disagree with this statement. The calculation for the adjusted price was included in a spreadsheet as an attachment to the Simite Wooden Prelim Bona Fide Memo and was released via ACCESS on December 28, 2016. This calculation started with Simite Wooden's reported sales price and then labeled and identified each adjustment that was made to Simite Wooden's price to accord with the same terms of sale as Penghong's.[45] As discussed above in Comment 1, one of those adjustments was ocean freight.[46]On December 30, 2016, Simite Wooden submitted a request that

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[42] 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, 20 16), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.
[43] *See* H. Rpt. No. 114-114 (2015) (May 14, 2015) (H. Rpt. No. 114) at 89.
[44] *See* Simite Wooden Prelim Bona Fide Memo at 7.
[45] *See* Simite Wooden Prelim Bona Fide Memo at Exhibit 1.
[46] *Id*.

the Department provide the calculation for its calculation of ocean freight, which was a component used to adjust Simite Wooden's U.S. price.[47] The Department acknowledged this inadvertent omission and placed the underlying calculation for ocean freight on the record on January 26, 2017.[48]

Second, Simite Wooden asserts that the Department should have provided additional record information from the AR3 proceeding. In particular, Simite Wooden asserts that, although the Department placed on the record sales databases from AR3 the Department also should have placed on the record the Section C and D narrative responses for the mandatory respondents, as well as the cost data.[49] As an initial matter, the Department allotted parties an opportunity to provide additional new factual information.[50] Thus, Simite Wooden had the opportunity to place the public versions of the Section C and D narrative responses (which it could obtain via the Department's centralized electronic service system, ACCESS) on the record of this proceeding, if it thought it was necessary to do so.

Third, although Simite Wooden asserts that it did not know how the Department would use certain data that was placed on the record, the Department is under no obligation to telegraph to parties how it intends to use data prior to its preliminary results.[51] In addition, Simite Wooden's own statements contradict the assertion that Simite Wooden was unaware of how the information could be used. For instance, in its September 15, 2016 submission, Simite Wooden made arguments regarding the contemporaneity of the data and whether the data involved comparable products.[52] Similarly, the other new shipper respondent, Keri Wood, argued in its September 15, 2016, submission that the price and quantity sales data for both Penghong and Fine Furniture confirm that Keri Wood's sale is *bona fide,* because the sale is commercially reasonable and is typical of normal business practices of other sales in the MLWF industry.[53] These arguments demonstrate that Simite Wooden was not only placed on notice but was, in fact, aware of the potential use of the data as part of a price comparison. Given these arguments, Simite Wooden

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[47] *See* Letter from Simite Wooden to the Secretary of Commerce, Regarding "Multilayered Wood Flooring from the People's Republic of China; A-570-970; New Shipper Review of Zhejiang Simite Wooden Co., Ltd.; Request for Further Disclosure of Calculations," dated December 30, 2016.
[48] *See* International Freight Memo.
[49] *See id.* at 36.
[50] *See* Memorandum to the File, Regarding "New Shipper Reviews of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China – US Sales Data from the Third Administrative Review," dated September 8, 2017 (allowing parties 7 days to comment); *see also* section 351.301(c)(4) of the Department's regulations (noting that when the Department places factual information on the record, an interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct the Department's factual information).
[51] *See, e.g., Boomerang Tube LLC, et al. v. United States,* --F.3d---, 2017 WL 1825425, *4 (Fed. Cir. May 8, 2017) ("{T}he {CIT's} decision is legally erroneous to the extent it stands for the proposition that Commerce must expressly notify interested parties any time it intends to change its methodology between its preliminary and final determinations, despite the inclusion of the relevant data in the record and the advancement of arguments related to that data before Commerce. There is no support for such a requirement.").
[52] *See* Letter from Simite Wooden to the Secretary of Commerce, "Multilayered Wood Flooring from the People's Republic of China; A-570-970; New Shipper Review of Zhejiang Simite Wooden Co., Ltd; Comments on Third Party BPI," dated September 15, 2016, at 2-3.
[53] *See* Letter from Keri Wood to the Secretary of Commerce, "Multilayered Wood Flooring from the People's Republic of China: Comments on Data Release Memo," dated September 15, 2016, at 2.

can hardly assert that it was unaware that the Department could potentially use such data for price comparisons, as is a common practice in NSR *bona fide* analyses.

Fourth, Simite Wooden argues that it could not access certain BPI data because it was not in the public file. Specifically, Simite Wooden argues that it did not have access to the quality or production cost data from AR3 for Penghong and Fine Furniture and that the Department failed to place this information on the record of this proceeding despite its request. As noted above in Comment 2, the Department accounted for physical differences, to the extent possible, by selecting the most specific and comparable CONNUM for comparison purposes. Based upon the product characteristics, Simite Wooden had an opportunity to comment on the quality of the wood flooring products from AR3. The Department did not place Penghong and Fine Furniture's cost data on the record of this NSR because it was not germane to the Department's analysis of sale price and the Department did not use the cost data in its sales price analysis. As noted above, the Department's *bona fide* sale analysis criteria set out the framework that the Department should follow to analyze the commercial nature of sales in NSRs.[54] To determine whether a sale in a NSR is *bona fide,* one factor the Department considers is the "price" of the sales.[55] Nowhere in the criteria and framework used to analyze the *bona fide* nature of a NSR sale, is the Department required to make adjustments for costs.[56] The Department adhered to the *bona fide* sale analysis criteria and did not place cost data on the record.

In sum, the Department disagrees with Simite Wooden's assertion that we made procedural errors in conducting this review. Moreover, the Department has considered and rejected similar arguments in past NSRs.[57]

Comment 8: Whether the Department should assign Simite Wooden a separate rate

- The Department must assign Simite Wooden a rate separate from that of the China-Wide rate if it continues to find its sale non-*bona fide*.
- Simite Wooden has placed on the record significant information its independence from the Government of China and the issue of independence is wholly unrelated to the prices.
- In the event the Department is unable to calculate an assessment rate and a deposit rate based on the transaction, it should still assign a new assessment and deposit rate to Simite Wooden based on a separate rate.

Department's Position: We disagree with Simite Wooden. The Department has an established practice of rescinding NSRs for companies that have exported subject merchandise to the United States during the review period when the transactions were not *bona fide*.[58] The Department has determined that Simite Wooden's sale is non-*bona fide* and is consequently rescinding Simite Wooden's NSR. Therefore, Simite Wooden does not have any reviewable sales during the POR. Because Simite Wooden does not have any reviewable sales, it cannot qualify for a separate rate. The Department does not assign an assessment rate and/or cash deposit rate to an entity in

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[54] *See* Simite Wooden Prelim Bona Fide Memo at 2.
[55] *Id.*
[56] *Id*.
[57] *See* (*MLWF 14-15 NSR Memo*) at Comment 5.
[58] *See, e.g.*, Fresh Garlic From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews; 2010-2011, 78 FR 18316 (March 26, 2013).

advance of that entity having a reviewable sale. Indeed, Simite Wooden has cited to no case in which we rescinded an NSR and then granted a separate rate to the company covered by the rescission.

The Department is not making any findings with regards to Simite Wooden's separate rate eligibility in this NSR. The Department will evaluate the information placed on the record of the subsequent administrative review to determine whether Simite Wooden is eligible for separate rate status in that segment of the proceeding.

RECOMMENDATION

Based on our analysis of the comments received and the factors described above, we recommend continuing to find that Simite Wooden's single sale was not *bona fide*, and we recommend rescinding its NSR. We also recommend continuing to find that Keri Wood's single sale at issue is bona fide and was not sold below NV, and that it is eligible for a separate rate. If accepted, we will publish the final results and partial rescission of these reviews in the *Federal Register*.

☒	☐
Agree	Disagree

5/26/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance