A-570-601
POR: 6/1/17 – 5/31/18
Public Document
E&C/OII: AW

February 11, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; 2017-2018

I. Summary

We analyzed the case brief that Shandong Aokai Bearing Co., Ltd. (Aokai) submitted in the 2017-2018 administrative review of the antidumping duty (AD) order covering tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (China). Based on Aokai's comments, and after careful analysis, we continue to find that Aokai did not have a *bona fide* sale during the period of review (POR) and, therefore, we are rescinding this administrative review with respect to Aokai.

No party raised any issues with respect to the *Preliminary Results*[1] for Zhejiang Jingli Bearing Technology Co. Ltd. (Jingli), Hangzhou Xiaoshan Dingli Machinery Co., Ltd. (Dingli), or Taizhou Zson Bearing Technology Co., Ltd. (Zson). Therefore, we continue to find that neither Jingli nor Dingli had a *bona fide* sale during the POR; because we cannot rely on Jingli's and Dingli's sales to calculate dumping margins in this administrative review, we are rescinding this administrative review with respect to these companies. We also continue to find that Zson is ineligible for a separate rate and, therefore, part of the China-wide entity.

Below is the complete list of the issues in this review for which we received comments:

Comment 1: Whether "*Bona Fides*" Testing is Applicable in Administrative Reviews
Comment 2: Whether Record Evidence Confirms that Aokai's Sale Was Not *Bona Fide*
Comment 3: Whether Rescinding this Administrative Review is Appropriate

[1] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Intent to Rescind the Review in Part; 2017-2018*, 84 FR 41701 (August 15, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

II. Background

On August 15, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of the 2017-2018 administrative review of the AD duty order on TRBs from China. Commerce initiated this administrative review for four exporters, of which Commerce selected three as mandatory respondents for individual examination (*i.e.*, Aokai, Jingli, and Zson). The POR is June 1, 2017 through May 31, 2018.

We invited parties to comment on the *Preliminary Results*. On September 20, 2019, we received a case brief from Aokai.[2] No other interested party submitted either case or rebuttal briefs.

On December 10, 2019, Commerce postponed the final determination by 60 days, to February 11, 2020.[3]

III. Scope of the Order

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from China; 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.

IV. Discussion of the Issues

Comment 1: Whether "*Bona Fides*" Testing is Applicable in Administrative Reviews

Aokai is a mandatory respondent in this administrative review. In the *Preliminary Results,* we preliminarily determined that Aokai did not have a *bona fide* sale to a U.S. customer during the POR, and, as a result, we found that its U.S. sale was not reliable for purposes of calculating a dumping margin.[4] Consequently, we preliminarily determined that this administrative review should be rescinded with respect to Aokai.

---

[2] *See* Aokai's Case Brief, "Case Brief: Administrative Review - Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Filed on Behalf of Shandong Aokai Bearing Co., Ltd.," dated September 20, 2019 (Aokai Case Brief).

[3] *See* Memorandum, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review," dated December 10, 2019.

[4] *See Preliminary Results* PDM at 8; *see also* Memorandum, "31st Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Analysis of the *Bona Fides* of Shandong Aokai Bearing Co., Ltd.'s Sale," dated August 9, 2019 (Aokai *Bona Fides* Memo).

Aokai's Arguments

- Commerce improperly applied its new shipper analysis to determine whether Aokai's U.S. sale was *bona fide*, when the main purpose of the Act is to calculate an accurate dumping margin.[5] Aokai did not request a new shipper review and it is improper to inflict such scrutiny upon a small company.[6]

- There is no need to apply the *bona fides* analysis to Aokai since it did not have other sales to the United States after the sale from this POR and would not be affected by any dumping margin that Commerce calculates.[7] Further, if Commerce determines that Aokai's sale was not *bona fide*, then it should allow Aokai to submit new factual information to support finding that its sale is *bona fide*.[8]

Commerce's Position

We disagree with Aokai that the *bona fides* analysis of its U.S. sale is only applicable in a new shipper review. Commerce has a long-standing practice of conducting a *bona fides* analysis in an administrative review if the circumstances warrant such an analysis.[9] Further, the Court of International Trade (CIT) has held that Commerce has the authority to conduct a *bona fides* analysis in the context of an administrative review.[10]

In 2016, Congress amended the law to add section 751(a)(2)(B)(iv) of the Act. This section requires Commerce to base the dumping margins in new shipper reviews on *bona fide* U.S. sale(s). Prior to this statutory amendment, the new shipper *bona fides* analysis was a matter of Commerce practice. There is no analogous statutory provision requiring that Commerce conduct a *bona fides* analysis in an administrative review. This means that the *bona fides* analysis in an administrative review remains a matter of Commerce practice. Further, Commerce's practice is consistent both in an administrative review and in a new shipper review where Commerce is making the same fair comparison of normal value with a U.S. sale price pursuant to section 773(a) of the Act. There is no reasonable explanation why a *bona fides* analysis would be relevant only in a new shipper review and not in an administrative review when no such

[5] *See* Aokai Case Brief at 7-10 (citing Sections 777A(a), (c)(1)-(2), and (c)(5) of the Act).
[6] *Id.* at 10-11.
[7] *Id.* at 18.
[8] *Id.*
[9] *See*, *e.g.*, *Silicomanganese from India: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75660 (December 3, 2015) (*2013-2014 AR of Silicomanganese from India*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*Hebei New Donghua*); *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1263 (CIT 2005) (*Tianjin Tiancheng*); and *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation: Final Results and Rescission of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 38948 (August 8, 2019) (*HRS Final Rescission*) and accompanying IDM.
[10] *See*, *e.g.*, *Evonik Rexim (Nanning) Pharmaceutical Co. Ltd. and Evonik Corporation v. United States*, 253 F. Supp. 3d 1364, 1370 (CIT 2017) (*Evonik Rexim*); *Catfish Farmers of America v. United States*, 641 F. Supp. 2d 1362, 1396 (CIT 2009) (September 14, 2009); *Windmill Int'l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1306 (CIT 2002) (*Windmill Int'l*); *American Silicon Technologies, Elkem Metals Company and Globe Metallurgical Inc. v. United States*, 110 F. Supp. 2d 992, 996 (CIT 2000); *FAG U.K. Ltd. v. United States*, 945 F. Supp. 260, 265 (CIT 1996); and *Chang Tieh Indus. Co. v. United States*, 840 F. Supp. 141, 146 (CIT 1993).

distinction is provided for in the statute. Therefore, contrary to Aokai's argument that it is improper to treat it as a "new shipper," we find that Congress's silence regarding an analysis of the *bona fides* of U.S. sales in an administrative review does not suggest that Commerce is prohibited from examining this issue in such an administrative review. Rather, it simply suggests that Commerce is not required to conduct a *bona fides* analysis in every administrative review, like it is in each new shipper review. We further find that the factors listed in section 751(a)(2)(B)(iv) of the Act can be used for guidance in conducting a *bona fides* analysis in an administrative review, even though they are not strictly applicable in an administrative review.

Aokai's claim that the *bona fides* of its U.S. sale should not be examined simply because it did request a new shipper review is misplaced.[11] The *bona fides* practice was developed so that a producer or exporter could not benefit unfairly from an atypical U.S. sale which may result in a distorted comparison of normal value with a U.S. sale price that is not reflective of the company's normal pricing behavior in the U.S. market.[12] The CIT has affirmed that an administrative review should not be based on a sale that is unrepresentative or distortive.[13]

While a *bona fide* analysis is explicitly required by the statute in the context of a new shipper review, if a producer's or exporter's transactions involve prices, quantities, or overall circumstances that are questionable, Commerce will evaluate the *bona fides* of each of the sales in the context of an administrative review.[14] Commerce analyzes such transactions in detail because "a U.S. sale must be a *bona fide* commercial transaction to be a basis for a dumping margin, and, therefore, we apply the same test in administrative reviews and new shipper reviews."[15] Regarding a review where a respondent reports a single U.S. sale, it is also well-established that Commerce heavily scrutinizes such situations because there is only one transaction with which to calculate a weighted-average dumping margin, assess antidumping duties, and establish a prospective cash deposit rate for estimated antidumping duties.[16] Thus, we disagree with Aokai's assertion that Commerce does not have the statutory authority to conduct a *bona fides* analysis on a single sale in an administrative review, just as Commerce may conduct a *bona fides* analysis in an administrative review where a respondent has reported multiple U.S. sales.

Finally, we disagree with Aokai's assertion that it is improper for Commerce to scrutinize its U.S. sale in this manner as Aokai is a "small" company and doing business at arm's length.[17] Aokai's arguments are unfounded and, more importantly, they are not supported by the information on the record and do not eliminate the concerns identified in Commerce's *bona fides* analysis.[18] Further, the statute provides no support for such an exception.

---

[11] *See* Aokai Case Brief at 10.
[12] *See Hebei New Donghua*, 374 F. Supp. 2d at 1342 (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).
[13] *See Windmill Int'l*, 193 F. Supp. 2d at 1312-13.
[14] *See Tissue Paper from China* IDM at Comment 4a; *see also HRS Final Rescission*.
[15] *See 2013-2014 AR of Silicomanganese from India* IDM at Comment 1.
[16] *Id.*; *see also* Aokai *Bona Fides* Memo at 9.
[17] *See* Aokai Case Brief at 11.
[18] *See* Aokai *Bona Fides* Memo.

In sum, Commerce has a long-standing practice of conducting *bona fides* analyses in single sale administrative reviews, and the courts have repeatedly upheld Commerce's authority to make such determinations. Accordingly, we find that it is within our authority to examine whether Aokai's single sale in this administrative review was *bona fide*.

Comment 2: Whether Record Evidence Confirms that Aokai's Sale Was Not *Bona Fide*

Aokai's Arguments

- Various aspects of Commerce's *Preliminary Results* do not support its conclusion that Aokai's sole U.S. sale was not *bona fide*.[19]

- Commerce's assessment of the low purchase quantity, high price, and trial nature of Aokai's U.S. sale would have more bearing if Aokai was considered as a new shipper. However, Aokai did not make the sale with the expectation that it would necessarily be typical of future sales. In fact, over time and with larger volumes of sales, prices would be negotiated to reflect current conditions.[20]

- Commerce ignored multiple factors that influence price, such as production cost; and other evidence that indicates Aokai's sole U.S. sale was made at a reasonable price.[21]

- Commerce's assertion that the quantity of Aokai's sole U.S. sale is atypical for this type of business is incorrect, as Aokai sells according to a customer's purchase order and because the importer had similar purchase order quantities during the POR.[22]

- The timing of Aokai's sale was not unusual since there was correspondence between Aokai and the importer that included explanations for the delay.[23] Commerce could have determined that Aokai's sale occurred outside the POR since the shipment did not enter the United States until after the start of the POR, but, as it did not, the delay in shipping is irrelevant.

- While not originally planned, the change of sale terms is not an unusual or extraordinary expense because ocean freight was inherent in the transaction.[24]

- Commerce never asked Aokai's importer if the sale represented a net profit and, as such, Commerce erred by substituting its own calculation of profit based on unsupported assumptions.[25]

[19] *See* Aokai Case Brief at 11.
[20] *Id.* at 12.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 13.
[24] *Id.* at 14.
[25] *Id.* at 14-15

- According to section 782(d) of the Act, Commerce is obligated to inform Aokai of any deficiencies and to provide it an opportunity to remedy or explain the deficiencies.[26] Since Commerce did not clearly ask that Aokai's importer calculate net profit on the sale, Commerce cannot presume that movement or other expenses would have eliminated net profit.

- With regard to the importer's late payment to Aokai, Commerce was obligated to ask for more details on the late payment before it considered this factor relevant to the *bona fides* analysis.[27]

- A single sale does not support a conclusion that the sale was not *bona fide*.[28]

Commerce's Position

We disagree with Aokai that its U.S. sale was *bona fide*, and we continue to find that, in examining the totality of the circumstances, the weight of evidence on the record supports Commerce's determination that Aokai's U.S. sale was not *bona fide*.

We explained our practice with respect to a *bona fides* analysis in an administrative review in the *Wind Towers from Vietnam Final*:

> {W}e consider the following factors when determining if a sale is *bona fide*: (1) timing of the sale; (2) price and quantity; (3) expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made at arm's length. Thus, we consider a number of factors in our *bona fide* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." In *Tianjin Tiancheng v. United States*, the court affirmed {Commerce's} practice of considering "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," and that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." In *Hebei New Donghua v. United States*, the court stated that {Commerce's} practice makes clear that {Commerce} "is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an AD Order."[29]

We continue to find that the price and quantity of Aokai's sole U.S. sale weighs against finding the transaction *bona fide*. As we explained in the Aokai *Bona Fides* Memo, Aokai: (1) sold the same model of TRB cups to the importer at a significantly higher price than the normal price the importer paid for the same merchandise (*i.e.*, a 38 to 59 percent premium);[30] (2) the TRB cups in

[26] *Id.* at 16-17.
[27] *Id.* at 17.
[28] *Id.*
[29] *See Utility Scale Wind Towers from the Socialist Republic Vietnam: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 55333 (September 15, 2015) (*Wind Towers from Vietnam Final*) and accompanying IDM at Comment 1; *see also Tianjin Tiancheng* and *Hebei New Donghua*, 374 F. Supp. 2d at 1338.
[30] *See* Aokai *Bona Fides* Memo at 5-6.

question were sold on a trial basis;[31] and (3) the quantity, as the importer understood, was atypical in the importer's normal course of business.[32] Further, the importer acknowledged that Aokai's single U.S. sale was small compared to its usual purchases and was priced higher than its usual purchases.[33] The notion that two out of the importer's 22 reported purchases were of identical quantities (*i.e.*, a mere nine percent) fails to substantiate Aokai's claim that the transaction was not atypical when 91 percent of the importer's purchases were of far greater quantities.[34] Additionally, the two transactions the importer made of identical quantities in the United States had significantly lower prices than Aokai's U.S. sale and, unlike the importer's sole purchase from Aokai, the importer's response indicates that the other two purchases of the same quantity were from a company with which it had an ongoing relationship (*i.e.*, they were not isolated purchases).[35] Further to the analysis provided in the preliminary *bona fides* memo for Aokai,[36] we have provided additional proprietary analysis with respect to the importer's purchases of the same model of TRB cups; this analysis continues to demonstrate that the small quantity and high price of Aokai's single sale weigh against a finding that the sale is *bona fide*.[37]

We do not disagree with Aokai's claim that price is affected by multiple factors; basic economics teaches the variety of ways in which price may be influenced. However, basic economics also shows that producers and consumers benefit from economies of scale and that the cost per unit of output decreases with increasing scale of production. Thus, to an optimum point, producers can maximize profits by decreasing price and increasing production, and to the same equilibrium point, consumers can benefit from decreased price and greater supply of the product. In other words, supply and demand will establish an optimum, equilibrium price for the product.

Aokai indicates that the supply and demand relationship between it and the importer were new and that the importer recognized this transaction as a trial sale to develop a new source of supply. Meanwhile, the relationship between the importer and its other suppliers is evident in that 20 out of 22 of the importer's other purchases of TRB cups were of greater quantities and lower prices. Indeed, Aokai stated in its case brief that, "{o}ver time, with larger volumes prices would be negotiated to reflect current conditions."[38] This statement is directly relevant to Commerce's *bona fides* analysis, because it indicates that Aokai's sole U.S. sale was not made at a typical price, or in commercial quantities, and is not indicative of either future prices or quantities of sales that might enter the U.S. after the completion of the administrative review. Moreover, Aokai's importer made essentially the same statement in its questionnaire response, confirming

[31] *Id.* at 5 (citing Aokai's June 6, 2019 Importer Supplemental Questionnaire Response (Importer June 6, 2019 SQR) at 4).
[32] *See* Importer June 6, 2019 SQR at 5. Specifically, the importer stated that, "{b}cause the relationship with Aokai was new, the decision was made to buy a small commercial quantity that the buyer and seller understood would have a higher price."
[33] *Id.*
[34] *See* Aokai *Bona Fides* Memo at 5-6.
[35] *Id.*; *see also* Aokai Case Brief at 12 where Aokai notes that its importer purchased the same quantity from another company twice in 2018; andAokai June 6, 2019 SQR at Exhibit I-8, which shows multiple transactions between Aokai's importer and the same supplier.
[36] *See* Aokai *Bona Fides* Memo.
[37] *See* Memorandum, "Aokai Final *Bona Fides* Analysis," dated concurrently with this memorandum (Aokai Final Analysis Memo).
[38] *See* Aokai Case Brief at 12.

that this was a trial sale, with a high price and a small quantity and that the price and quantity would be substantially different in the future:

> The price for Aokai's product was higher and the volume was smaller than the price and quantity offered by the Importer's other sources. The differences in price and quantity reflected the different business relationship the Importer had with Aokai – a first time supplier – and with the other sources. Because the relationship with Aokai was new, the decision was made to buy a small commercial quantity that the buyer and seller understood would have a higher price. The Importer wanted to develop a new source of supply and was primarily concerned that he could make a profit on the resale while checking the quality. To sustain the relationship, the Importer expects that Aokai's price will be comparable to the prices from the Importer's other sources taking into account possible quality and quantity differences.[39]

Thus, we find the price and quantity of Aokai's U.S. sale during the POR is not representative of its or the importer's normal business practice and indicates that Aokai's sale is not *bona fide*.

With respect to the timing of the sale, we disagree with Aokai. First, Aokai's statement that Commerce could have determined the sale fell outside of the POR is misplaced given that the POR is June 1, 2017, through May 31, 2018, and the shipment did in fact enter the United States customs territory during the POR.[40] In general, section 751(a) of the Act directs Commerce to examine each entry of subject merchandise during the period of review. The date of sale associated with such an entry is based on the factual situation associated with each entry. Although the sole U.S. entry occurred early in the POR, the time when the entry occurred does not itself indicate that Aokai's sale was not made on a *bona fide* basis. Here, however, record evidence (*i.e.*, customer correspondence in the form of emails) leads us to question the timing of this sale. Specifically, the correspondence regarding the sale negotiations indicates that Aokai and its importer established a date on which shipment would occur, but it was only significantly after the intended date of shipment had lapsed that Aokai alerted the importer that the merchandise under review had shipped.[41] Further, Aokai's argument that timing was irrelevant is negated by its statement that the importer needed the product.[42] These details regarding the timing of the sale are not typical business considerations, and thus, weigh in favor of finding the sale non-*bona fide*.

With respect to "other relevant factors," *i.e.*, circumstances of the sale and customer correspondence, late payment, the sale terms agreement, and the fact that Aokai made only a single sale during the POR, we continue to find that the record evidence indicates these factors weigh in favor of finding the sole U.S. sale under review non-*bona fide*. First, the circumstances of the sale and customer correspondence indicate that Aokai dictated the terms of the sale, *i.e.*, the unit value, volume, sale terms, purchase order, and delivery location. Further, Aokai's

[39] *See* Importer June 6, 2019 SQR at 5.
[40] *See* Aokai *Bona Fides* Memo at 6.
[41] *Id.*
[42] *Id*. at 6-7.

questionnaire responses show that Aokai and the customer agreed on the specific sales terms,[43] but Aokai then altered the sales terms before shipment so that Aokai paid for ocean freight.[44] Aokai did not increase the price to account for the change in sales terms, and the record provides no explanation as to why Aokai would have chosen to incur this added expense in the ordinary course of its business with no remuneration from the customer. Therefore, we find that Aokai incurred unusual or extraordinary expenses as a result of the transaction under examination, which were not consistent with the negotiated contract price and which weigh against a finding that the sale is *bona fide*.

With respect to whether the importer adhered to the payment terms established in the sales contract with Aokai, in previous determinations, Commerce has analyzed payments from the customer when other characteristics of the sale indicate that the transaction was atypical.[45] Consequently, we evaluated payment from the customer and find that this factor also indicates this sale may have been atypical, because clauses in the contract were not followed. As such, this information weighs in favor of finding Aokai's sole U.S. sale non-*bona fide*.

Further, with respect to both ocean freight and payment, because certain portions of the sales agreement between Aokai and its importer were adhered to, while other portions were disregarded, we find that this factor also weighs in favor of finding the sale non-*bona fide*. Additionally, there are no other U.S. sales by Aokai to use as a comparison to indicate that such irregularities somehow typify Aokai's business practices. Given these discrepancies, we find that this sale was not conducted pursuant to the written sales terms, which further contributes to our finding that this single transaction was not *bona fide*.

Although Aokai's importer cooperated by providing most information we requested throughout this review, it did not provide a complete accounting of its profit on the resale of the TRBs which it imported from Aokai. Aokai argues that Commerce's assumptions with respect to the importer's other expenses in reselling the imported TRBs, including U.S. delivery costs, are somehow incorrect and that the sale to the downstream customer by Aokai's importer was still made at a profit – or otherwise Commerce should have requested additional information. We disagree with respect to both claims. First, resale at a profit is but one element, of many, which Commerce examined as part of its *bona fides* analysis. Second as we explained in the proprietary Aokai *Bona Fides* Memo:[46]

---

[43] *Id*. (citing Aokai December 20, 2018 AQR at Exhibit A-11 and Aokai January 15, 2019 CQR at C-21 – 22.).
[44] *Id.*; *see also* Aokai SRA at Exhibit 1; Aokai June 6, 2019 SQR at 9-10 ("The terms of sale for this subject merchandise sold to the Importer was [***]. However, Aokai ultimately paid the ocean freight charges… Aokai apologizes for the initial misunderstanding and erroneously reporting the ocean freight cost in Section C questionnaire submission on January 15, 2019."); and Importer June 6, 2019 SQR at I-7 ("The Importer did not pay international ocean freight related to shipment of the subject merchandise from China to the destination in the United States. Please refer to Aokai's Response to its Supplemental Questionnaire.").
[45] *See Tianjin Tiancheng*, 366 F. Supp 2d. at 1260-1261; *see also, e.g.*, *2013-2014 AR of Silicomanganese from India*; *Certain Pasta from Turkey: Final Results of Rescission of Antidumping of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 6516 (February 14, 2018); *see also Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation: Final Results and Rescission of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 38948 (August 8, 2019) and accompanying IDM at comment 2.
[46] *See* Aokai *Bona Fides* Memo at 7-8.

> Aokai's importer states that it resold the subject merchandise at a gross profit.[47] However, {Aokai's importer}'s calculation of profit does not take into account expenses associated with importation of the merchandise or delivery to the customer.[48] Specifically, {Aokai's importer} calculated a gross profit, before any expenses, of $[***] on the sale of Aokai's cups, based upon the difference between the purchase price from Aokai and the sale price to the unaffiliated U.S. customer.[49] However, {Aokai's importer} neglected to reduce the gross profit by either the $[***] handling charges for arrival of the TRBs[50] or the $[***] regular duty and merchandise processing fees recorded on the CBP 7501 entry form.[51]
>
> {Aokai's importer} similarly failed to explain how the merchandise was delivered from the port to its own warehouse, or to its unaffiliated customer. Further, despite the fact that {Aokai's importer} appears to have borne these costs,[52] {Aokai's importer} provided no documentation for, or an accounting of, any delivery or warehousing costs.[53] Further, neither Aokai nor {Aokai's importer} provided the necessary documentation (including a calculation worksheet, associated accounting entries, or evidence of any charges or expenses that {Aokai's importer} incurred to resell the TRBs) to support the profit calculation,[54] as required by the May 14, 2019 Questionnaire for Aokai's Importer.[55]
>
> Finally, it is reasonable to presume that {Aokai's importer} incurred selling, general, and administrative expenses associated with the resale, which it also did not take into account. Therefore, although the importer stated that it resold the merchandise at a profit, the record does not support such a statement. Thus, this consideration weighs against a finding that the sale is *bona fide*.[56]

By failing to provide the requested information in its entirety, Aokai's importer precluded Commerce from examining all of the relevant resale and profit information critical to this *bona fides* analysis.

---

[47] *See* Importer June 6, 2019 SQR at 9 and Exhibit I-13.
[48] *Id.* at 9 and Exhibit I-13.
[49] *Id.*
[50] *Id.* at Exhibit I-12.
[51] *See* Aokai December 20, 2018 AQR at Exhibit A-11.
[52] *See* Aokai June 6, 2019 SQR at 10, where Aokai reported that the terms of delivery were, in fact [***]; *see also* Importer June 6, 2019 SQR at 9. The purchase order from {Aokai's importer}'s customer shows that the delivery terms are "[***]" (*i.e.*, [***]). *Id.* at Exhibit I-9. Further, {Aokai's importer}'s response indicates that it warehoused the cups for [***] months after the time of entry, until they were resold. *See* Importer June 6, 2019 SQR at Exhibits I-11 and I-12.
[53] *See* Importer June 6, 2019 SQR at 9 and Exhibits I-10 through I-13.
[54] *Id.* at 9 and Exhibit I-13. The importer provided only a narrative statement and selected sales and payment documents at Exhibits I-10 through I-13.
[55] *See* May 14, 2019 Questionnaire for Aokai's Importer at I-4. Given that {Aokai's importer}'s maximum "profit" is [***] (*i.e.*, $[***] less $[***] and $[***]), and it failed to account for various movement expenses, it is unlikely that the cups {Aokai's importer} purchased from Aokai were, in fact, sold at a net profit at all.
[56] *See* Aokai *Bona Fides* Memo at 7-8.

Specifically, in our supplemental questionnaire to Aokai's importer, we requested the following information:

> 28. Provide all warehousing cost documentation and freight invoices for the sales of the subject merchandise which {Aokai's importer} purchased from Aokai and resold (*i.e.*, including freight from China, for warehousing in the United States, and for freight from the port/warehouse to the customer in the United States).
>
> 29. Demonstrate the gross profit figure for your sales of merchandise purchased from Aokai and provide supporting documentation, including accounting entries, for this claim.[57]

As discussed in the Aokai *Bona Fides* Memo, Aokai's importer provided a response that did not include all of the expenses which it incurred, or a complete accounting for its gross profit (as requested by the questionnaire).[58] Further, Aokai's importer did not include its accounting entries to substantiate the reported figures – despite the fact that such supporting documentation was clearly requested in the original supplemental questionnaire.[59] Additionally, Aokai's insistence that Commerce was obligated to ask for more information, under section 782(d) of the Act,[60] is irrelevant when the information on the record makes clear that Aokai could not have made a profit on the resale of the imported TRB cups.[61] If Aokai, or its importer, were experiencing any difficulties answering Commerce's questions as they are "small" companies, then they were obligated, under 782(c)(1)-(2) of the Act, to request assistance in supplying complete responses to our questionnaires. The CIT has upheld that the burden of developing a record lies with the interested parties to the review, not with Commerce.[62] Moreover, this was just one of many factors that we relied upon as part of our analysis of the totality of the circumstances. Even if we were to find that this factor did not count against finding Aokai's sale to be non-*bona fide*, it is not the sole factor we considered, and thus the fact that we did not request further clarification from Aokai's importer on this matter does not support Aokai's position or invalidate Commerce's conclusions. Furthermore, based upon the information that was submitted, it is still evident that Aokai's importer made no net profit on its resale of Aokai's TRBs, based upon the high price that it paid Aokai for the cups, and the considerable expenses it incurred to import and resell the TRBs.[63] Consequently, we continue to find that this factor further indicates that the sale was not a *bona fide* transaction.

Finally, regarding the fact that a single sale was made during the POR, we agree that this fact alone would not by itself indicate a sale to be commercially unreasonable; however, the CIT has

---

[57] *See* May 14, 2019 Questionnaire for Aokai's Importer at I-4.
[58] *See* Aokai *Bona Fides* Memo at 7-8; *see also* Importer June 6, 2019 SQR at 9 and Exhibits I-10 through I-13.
[59] *See* Importer June 6, 2019 SQR at 9 and Exhibit I-13.
[60] *See* Aokai Case Brief at 15-16.
[61] *See* Aokai *Bona Fides* Memo at 7-8; *see also* Aokai Final Analysis Memo.
[62] *See, e.g.*, *Chia Far Indus. Factory Co. v. United States*, 343 F. Supp. 2d 1344 (CIT 2004) ("Ultimately, the burden of creating an adequate record lies with the respondents, not Commerce."); *Chia Far Indus. Factory Co. v. United States*, 705 F. Supp. 598 (CIT 1989); and *Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008 (CIT 1992).
[63] *See* Aokai *Bona Fides* Memo at 7-8; *see also* Aokai Final Analysis Memo for further proprietary analysis of the expenses and profit calculation.

agreed that a single sale must be "carefully scrutinized."[64] In this instance, because Aokai reported only a single U.S. sale, and Commerce has no other transactions from which to draw inferences, and given the other information on the record, we conclude that the fact that Aokai made only a single sale during the POR further weighs against finding the sale *bona fide*. The fact that Aokai's single sale has not been replicated indicates that it may not be representative of future sales.

In conclusion, based on the totality of the evidence concerning Aokai's U.S. sale, as discussed above, we continue to determine that this transaction was not *bona fide*.

Comment 3: Whether Rescinding the Administrative Review Is Appropriate

Aokai's Arguments

- In light of affirmations from the CIT and the Court of Appeals for the Federal Circuit (Federal Circuit),[65] the purpose of the Act is to calculate dumping margins as accurately as possible. Per *Chevron*, if the Act is silent with regard to an issue, the court must determine whether Commerce's determination was permissible.[66] Moreover, Commerce must take into account all relevant information (*i.e.*, not only "isolated tidbits" of data that run contrary to the clear weight of the evidence) before making a determination.[67]

- Commerce should not rescind this administrative review for Aokai, but should calculate a weighted-average dumping margin based on the company's U.S. sale.[68]

Commerce's Position

We disagree with Aokai's assertion that Commerce must calculate a weighted-average dumping margin for it in the current review. As Commerce has explained, when a "respondent under review makes only one sale and {Commerce} finds the transaction atypical, 'exclusion of that sale as non-*bona fide* necessarily must end the review as no data will remain on the export price

[64] *See* Aokai *Bona Fides* Memo at 9 (citing *Tianjin Tiancheng*, 366 F. Supp 2d. at 1263); *see also Windmill Int'l*, 193 F. Supp. 2d at 1313).
[65] *See* Aokai Case Brief at 7 (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir. 1990) (*Rhone Poulenc*); *Lasko Metal Prod., Inc. v. United States*, 43 F.3d 1442 (Fed. Cir. 1994) (*Lasko Metal*); *Koyo Seiko Co. v. United States*, 20 F.3d 1156 (Fed. Cir. 1994) (*Koyo Seiko*); *U.S. Steel Grp. v. United States*, 177 F. Supp. 2d 1325 (CIT 2001) (*U.S. Steel Grp.*); and *Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc. v. United States*, 268 F.3d 1376 (Fed. Cir. 2001) (*Shakeproof Assembly*)).
[66] *Id.* at 7 (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 104 S. Ct. 2778, 2781-82 (Sup. Ct. 1984) (*Chevron*)).
[67] *Id.* at 7-8 (citing *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034 (Fed. Cir. 1996) (*Fujitsu*); *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927 (Fed. Cir. 1984) (*Matsushita Elec.*); *USX Corp. v. United States*, 655 F. Supp. 487 (CIT 1987) (*USX Corp.*); and *Gerald Metals, Inc. v. United States*, 132 F. 3d 716 (Fed. Cir. 1997) (*Gerald Metals*)).
[68] *Id.* at 11.

side of {Commerce's} antidumping duty calculation.'"[69] Calculating a rate based on a non-*bona fide* sale would create an inaccurate result.

Aokai cites to *Rhone Poulenc*,[70] *Koyo Seiko*, *U.S. Steel Grp.*, and *Shakeproof Assembly* to support the proposition that the main purpose of the Act is to protect the U.S. domestic industry from unfair trade practices of foreign producers and exporters and to calculate accurate weighted-average dumping margins.[71] We agree with these principles. However, in the instant review, we are rescinding the administrative review because there is not a *bona fide* sale with which to calculate a weighted-average dumping margin. We are not determining a new rate for Aokai. More precisely, because of the rescission, Aokai's rate will continue to be the rate to which it was subject prior to the administrative review and at which its merchandise entered the U.S. customs territory, *i.e.*, 92.84 percent, the rate applicable to the China-wide entity.

Aokai further cites to *Lasko Metal* for clarification that the "purpose of the Act is to prevent dumping…"[72] The issue in *Lasko Metal*, however, was whether Commerce could calculate a weighted-average dumping margin using a non-market economy (NME) producer's actual international market prices paid for inputs, along with surrogate values for inputs from the NME.[73] The Federal Circuit affirmed in *Lasko Metal* that, when the statute is silent or does not compel a single understanding, the courts will defer to an agency's interpretation so long as "…the agency's answer is based on permissible construction of the statue."[74] Further, *Lasko Metal* states that, "…the Supreme Court and this court have held that 'our duty is not to weigh the wisdom of, or to resolve any struggle between, competing views of the public interest, but rather to respect legitimate policy choices made by the agency in interpreting and applying the statute.'"[75]

As stated above, and consistent with our prior practice, we cannot accurately calculate a weighted-average dumping margin without the presence of a *bona fide* U.S. sale to include in that calculation. The record in this administrative review shows that Aokai only had a single U.S. sale during the POR that Commerce has found to be non-*bona fide*. Because we found the

---

[69] *See Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 22nd Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Reviews; 2015-2016*, 82 FR 57718 (December 7, 2017) (citing *Tianjin Tiancheng*, 366 F. Supp 2d. at 1249).
[70] *See Rhone Poulenc*, 899 F.2d at 1187, 1191. The respondent in *Rhone Poulenc* had *bona fide* sales in previous administrative reviews and, even though the respondent had not participated in the investigation, the Federal Circuit determined that Commerce's finding that the 60 percent margin from the less than fair value investigation was the "best information" to assign Rhone Poulenc's 1984 and 1985 dumping margins, and was supported by substantial evidence on the record and otherwise in accordance with law.
[71] *See* Aokai Case Brief at 7.
[72] *Id.* at 7 (citing *Lasko Metal*, 43 F.3d at 1446).
[73] *See Lasko Metal* at 1443-44.
[74] *Id*. at 1446 (citing *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 665 (Fed. Cir. 1992), aff'd, 44 F.3d 978 (Fed. Cir. 1994) (citing *Chevron* at 866, "When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: 'Our Constitution vests such responsibilities in the political branches.'")).
[75] *Id.* at 1446.

sale to be not *bona fide*, as explained above, we are rescinding the review for Aokai because it did not have a reviewable POR sale that would allow Commerce to calculate a legitimate margin for it, as envisioned by the statute.

Moreover, we disagree with Aokai's assertion, citing to *USX Corp.* and *Gerald Metals*, that the *Preliminary Results* were based on "isolated tidbits" of data, and not on substantial evidence. Both of those opinions take issue with the International Trade Commission's (ITC) use of data at its disposal. In both situations, the ITC had chosen specific data that it thought were relevant to the analysis at hand and the Federal Circuit and CIT remanded the issues back to the ITC for further consideration. These opinions do not apply here, because there is no other data to evaluate or use to calculate a weighted-average dumping margin for Aokai. If Aokai had other *bona fide* U.S. sales during the POR, then it might have been justified in questioning the rescission. However, as the record reflects, the only information available demonstrates that Aokai's single U.S. sale during the POR was not *bona fide* (as discussed in Comment 2), which necessitates a rescission of the administrative review with respect to Aokai. Indeed, Aokai's statement that it "does not object to Commerce rescinding the review, {but} simply requests that Commerce calculate a margin for…" its non-*bona fide* sale, is confusing,[76] because without a completed review, there is no calculated result. Further, none of the cases cited by Aokai speak to Commerce's practice and authority to rescind a review when there is no *bona fide* sale. In sum, it is well-established that Commerce will conduct an administrative review when both a suspended entry of subject merchandise and a request for a review are made; however, in a situation where there is no *bona fide* sale made during the POR and, therefore, no basis to calculate an accurate and non-distorted weighted-average dumping margin, it is within Commerce's authority to rescind the review.[77]

Commerce's discretion in interpreting and applying the statute is reaffirmed in several of Aokai's citations.[78] Indeed, in *Matsushita Elec.*, the Federal Circuit reversed the CIT's decision that the ITC did not rely on substantial evidence that modifying or revoking an order on television receivers from Japan would cause material injury to U.S. producers, because it found that the ITC's decision was based on substantial evidence and was rational. Further, the Federal Circuit declared that it does "not discern that the Commission imposed a 'burden of proof' on the Japanese importers to prove no injury was likely to occur. The Commission's decision does not depend on the 'weight' of the evidence, but rather on the expert judgment of the Commission based on the evidence of record."[79] Consistent with *Matsushita Elec.*, we find that the available evidence on the record indicates that Aokai's single, non-*bona fide* sale precludes Commerce from calculating a margin for Aokai and necessitates the rescission of Aokai's request for review in this segment of TRBs from China, because there are no other sales from which Commerce could calculate a margin.

---

[76] *See* Aokai Case Brief at 4.
[77] *See, e.g.*, *Evonik Rexim*, 253 F. Supp. 3d at 1370.
[78] *See Chevron; Fujitsu; Lasko Metal*; and *U.S. Steel Grp.* We note that in *Torrington Co. v. United States*, 68 F.3d 1347, 1351 (Fed. Cir. 1995), it states that, "…we accord substantial deference to Commerce's statutory interpretation, as the International Trade Administration is the 'master' of the antidumping laws."
[79] *See Matsushita Elec.*, 750 F.2d at 933.

Accordingly, since there is no *bona fide* sale, we must rescind the administrative review with respect to Aokai, as the necessary information to calculate a weighted-average dumping margin for Aokai is not available on the record. This rescission leaves in place Aokai's lawfully-assigned rate as part of the China-wide rate.[80] Thus, Commerce is justified in rescinding the review, and Aokai's sole entry must be liquidated at the cash deposit rate under which it entered.

V. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the administrative review for Zson and the rescission of the administrative review with respect to Aokai, Dingli, and Jingli in the *Federal Register*.

☒	☐
Agree	Disagree

2/11/2020

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[80] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 39688 (August 10, 2018).