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June 7, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Rescission of the 2020
Antidumping Duty New Shipper Review of Mattresses from the
People's Republic of China

I. SUMMARY

After considering the comments and rebuttal comments on the *Preliminary Results* of this new shipper review (NSR) of mattresses from the People's Republic of China (China), we continue to find that Shanghai Sunbeauty Trading Co., Ltd. (Sunbeauty) did not make a *bona fide* sale during the period of review (POR) and, thus, the NSR should be rescinded.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. We received comments from interested parties concerning only the following issue:

Comment: Whether Sunbeauty's Sale is a *Bona Fide* Sale

II. BACKGROUND

On March 1, 2021, the Department of Commerce (Commerce) published the *Preliminary Results* of this NSR covering the POR, June 4, 2019, through May 31, 2020.² In accordance with 19 CFR 351.309(c)(1)(ii) and (d)(1)-(2), we invited interested parties to comment on the *Preliminary Results*. On March 31, 2021, Commerce received a case brief from Sunbeauty.³ On

¹ See *Mattresses From the People's Republic of China: Preliminary Intent To Rescind the 2020 Antidumping Duty New Shipper Review*, 86 FR 11924 (March 1, 2021) (*Preliminary Results*); see also Memorandum, "Preliminary *Bona Fide* Sales Analysis for Shanghai Sunbeauty Trading Co., Ltd.," dated February 18, 2021 (*Preliminary Bona Fides Memorandum*).

² See *Preliminary Results*; see also *Preliminary Bona Fides Memorandum*.

³ See Sunbeauty's Letter, "Sunbeauty's Case Brief," dated March 31, 2021 (Sunbeauty's Case Brief).



April 9, 2021, Commerce received a rebuttal brief from the petitioners.⁴

III. SCOPE OF THE ORDER

The products covered by this order are all types of youth and adult mattresses. The term “mattress” denotes an assembly of materials that at a minimum includes a “core,” which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain (1) “upholstery,” the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) “ticking,” the outermost layer of fabric or other material (*e.g.*, vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this order is restricted to only “adult mattresses” and “youth mattresses.” “Adult mattresses” have a width exceeding 35 inches, a length exceeding 72 inches, and a depth exceeding 3 inches on a nominal basis. Such mattresses are frequently described as “twin,” “extra-long twin,” “full,” “queen,” “king,” or “California king” mattresses. “Youth mattresses” have a width exceeding 27 inches, a length exceeding 51 inches, and a depth exceeding 1 inch (crib mattresses have a depth of 6 inches or less from edge to edge) on a nominal basis. Such mattresses are typically described as “crib,” “toddler,” or “youth” mattresses. All adult and youth mattresses are included regardless of actual size description.

The scope encompasses all types of “innerspring mattresses,” “non-innerspring mattresses,” and “hybrid mattresses.” “Innerspring mattresses” contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as “innerspring mattresses” or “hybrid mattresses.” “Hybrid mattresses” contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

“Non-innerspring mattresses” are those that do not contain any innerspring units. They are generally produced from foams (*e.g.*, polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this order may be imported independently, as part of furniture or furniture mechanisms (*e.g.*, convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a “mattress foundation.” “Mattress foundations” are any base or support for a mattress. Mattress foundations are commonly referred to as “foundations,” “boxsprings,” “platforms,” and/or “bases.” Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if

⁴ See Petitioners’ Letter, “Mattress Petitioners’ Rebuttal Brief,” dated April 9, 2021 (Petitioners’ Rebuttal Brief). The petitioners are Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (petitioners).

imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this order are “futon” mattresses. A “futon” is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A “futon mattress” is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are integrated into the design and construction of, and inseparable from, the furniture framing. Such furniture may, and without limitation, be commonly referred to as “convertible sofas,” “sofa beds,” “sofa chaise sleepers,” “futons,” “ottoman sleepers” or a like description.

Further, also excluded from the scope of this order are any products covered by the existing antidumping duty order on uncovered innerspring units. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009).

Additionally, also excluded from the scope of this order are “mattress toppers.” A “mattress topper” is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this order are currently properly classifiable under Harmonized Tariff Schedule for the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this order may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

IV. DISCUSSION OF THE ISSUE

Comment: Whether Sunbeauty's Sale is a *Bona Fide* Sale

Sunbeauty's Case Brief

- Commerce's preliminary determination regarding the non-*bona fide* nature of Sunbeauty's sale is seriously deficient, and Commerce cherry-picked the record while ignoring evidence contrary to its pre-determined conclusion.⁵
- The purpose of an NSR is to facilitate trade, not to inhibit trade; Commerce's preconceived determination ignores the purpose of NSRs and ignores substantial evidence.⁶
- Commerce's determination with respect to price relies on three flawed sources of data.⁷ These flaws render Commerce's determination inaccurate and wholly unreliable.⁸
- Average unit value (AUV) data from U.S. Customs and Border Protection (CBP) are not reliable because entry values do not align with sales prices.⁹
- Size is an important factor affecting mattress prices and Commerce only compared mattresses similar to Sunbeauty's mattress.¹⁰
- The Harmonized Tariff Schedule subheading used by Commerce is overinclusive (it includes products of dimensions different than Sunbeauty's mattress) and, therefore, the AUV data are an inappropriate benchmark.¹¹
- The mattress prices of Healthcare Co., Ltd. (Healthcare) and Zinus Xiamen Inc. (Zinus) are not fit to compare to Sunbeauty's mattress price.¹²
- The materials and production cost of Sunbeauty's mattress make it not comparable to Healthcare and Zinus' mattresses.¹³
- Zinus' mattresses are among the lowest price brands in the United States.¹⁴
- Healthcare and Zinus target different consumer groups and market segments than Sunbeauty, indicating that the mattresses are not comparable.¹⁵
- Sunbeauty's mattress size and the material are unique.¹⁶
- Custom mattresses are typically more expensive than the standard size mattresses sold by Healthcare and Zinus.¹⁷
- Commerce should not use the sales of Healthcare and Zinus to compare to Sunbeauty's sale because Commerce has determined that Healthcare and Zinus were dumping.¹⁸

⁵ See Sunbeauty's Case Brief at 1-2.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 5-6.

- Commerce’s examination of Sunbeauty’s domestic sales prices is outside its usual practice.¹⁹
- In comparing Sunbeauty’s domestic sales prices to Sunbeauty’s U.S. market sale, Commerce failed to account for quantity, freight, export expenses, bargaining power of parties involved in the negotiation, the market difference between the United States and China, and Sunbeauty’s price policy.²⁰
- Regarding Commerce’s analysis of quantity, Commerce deviated from its usual practice when it examined Sunbeauty’s domestic sale quantities.²¹
- Domestic sales in the Chinese market are not comparable to export sales, making Commerce’s comparisons inapposite.²²
- Low quantity is not an atypical characteristic of selling customized mattresses.²³
- Sunbeauty’s sale quantity is not atypical, considering data from CBP, because a substantial portion of entries are the same quantity as Sunbeauty’s entry.²⁴
- Sunbeauty’s pricing decisions for the sale are the result of professional price negotiation rather than an indicator that transaction was not made on an arm’s-length basis.²⁵
- Sunbeauty’s payment term is commercially reasonable, considering the evidence on the record.²⁶
- Payment guarantees are generally not required for mattress sales.²⁷
- Sunbeauty sold its mattress to an established company (Customer X) and there is no evidence that Customer X had bad credit (which may necessitate a payment guarantee).²⁸
- The payment term Sunbeauty granted to its U.S. customer is a well-thought business decision taking all factors into consideration.²⁹
- Commerce misinterpreted and mischaracterized the record evidence it relied upon to find that Sunbeauty’s sales will not be typical of future sales.³⁰
- The circumstances that Commerce relied on in making its determination that Sunbeauty’s sale is not typical of future sales can be explained by the Covid-19 pandemic.³¹
- Sunbeauty’s revenue from mattresses suggests that the likelihood of future sales by Sunbeauty is high rather than low.³²
- Customer X has adequately explained its shift in business to mattresses.³³

¹⁹ *Id.* at 6.

²⁰ *Id.* at 7.

²¹ *Id.* at 7-8.

²² *Id.* at 8.

²³ *Id.* at 9.

²⁴ *Id.*

²⁵ *Id.* at 10.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 10-11. Customer X is identified by Commerce in the Preliminary *Bona Fides* Memorandum. *See also* Memorandum, “Discussion of Proprietary Information Related to the Non-Bona Fide Sale Determination,” dated concurrently with this memorandum (Proprietary Information Memorandum).

²⁹ *See* Sunbeauty’s Case Brief at 11.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 12.

- Although Commerce emphasized that Sunbeauty has no demonstrable export/business strategy, Sunbeauty has expanded its mattress business without any business plans.³⁴
- Sunbeauty conducts traditional business without selling online – this does not mean Sunbeauty is unlikely to conduct similar future sales.³⁵
- The transaction does not bear unusual business risk, because Sunbeauty could easily absorb a potential loss on the sale.³⁶
- The subject sale does not represent a risky transaction for Customer X, because the payment terms were not unusual and the antidumping duty cash deposit is potentially refundable.³⁷
- Commerce’s analysis of allegedly inconsistent responses is flawed – Sunbeauty’s business license, an official document, is sufficient to prove the legitimacy of Sunbeauty’s organizing documents.³⁸
- Customer X responded to two different questions in Commerce’s questionnaires – Commerce mischaracterized the record in determining that Customer X provided inconsistent responses.³⁹

The Petitioners’ Rebuttal Brief

- Commerce applied its usual multi-factor *bona fide* sales test in this review.⁴⁰
- Commerce correctly determined that Sunbeauty did not make a *bona fide* sale and should rescind the NSR.⁴¹
- Commerce correctly determined that Sunbeauty did not make a sale in commercial quantities.⁴²
- Customer X is not an end user of mattresses, is new to the mattress business, and reported purchasing only a single mattress.⁴³
- Commerce found that Sunbeauty’s own business practices conflicted with its behavior in the transaction with Customer X.⁴⁴
- Data from CBP support the conclusion that Sunbeauty’s sale was not in the usual commercial quantities.⁴⁵
- The data from Healthcare and Zinus, mandatory respondents in the antidumping duty investigation, demonstrate that Sunbeauty’s sale was not in the usual commercial quantities.⁴⁶

³⁴ *Id.*

³⁵ *Id.* at 12-13.

³⁶ *Id.* at 13.

³⁷ *Id.*

³⁸ *Id.* at 14.

³⁹ *Id.*

⁴⁰ *See* Petitioners’ Rebuttal Brief at 1.

⁴¹ *Id.* at 2.

⁴² *Id.*

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 4.

⁴⁵ *Id.*

⁴⁶ *Id.* at 4-5.

- Sunbeauty’s lack of experience as an exporter weighs in favor of the conclusion that Sunbeauty’s export of a single mattress was not made in the usual commercial quantities.⁴⁷
- Commerce correctly determined that the sales price for Sunbeauty’s subject merchandise was neither commercially reasonable nor indicative of prices at which Sunbeauty would likely sell mattresses in the U.S. market in the future.⁴⁸
- AUVs from CBP data, and data from Healthcare and Zinus, support the assertion that Sunbeauty’s sales price was commercially unreasonable.⁴⁹
- In attempting to rebut Commerce’s determination, Sunbeauty failed to bear the burden of proving certain crucial facts.⁵⁰
- The market differences that Sunbeauty points out in its case brief are insufficient to explain Sunbeauty’s U.S. market sales price.⁵¹
- The payment term for Sunbeauty’s sale raises doubts about the arm’s-length nature of Sunbeauty’s sale.⁵²
- Sunbeauty’s sales terms were aberrational compared to the mandatory respondents in the antidumping duty investigation.⁵³
- The arm’s-length nature of the sale is further undermined by the fact that Sunbeauty and Customer X both primarily operated as sellers of food products before suddenly deciding to embark upon mattress sales.⁵⁴
- Commerce identified inconsistencies in Sunbeauty’s and Customer X’s responses -- casting doubt on whether the single sale will likely be typical of future sales.⁵⁵
- Sunbeauty lacks verifiable signs of a business strategy for the U.S. market.⁵⁶
- Sunbeauty’s sale involved an unusual amount of business risk for Sunbeauty and Company X – Sunbeauty does not deny this, but argues that Commerce misinterpreted the significance of the facts it identified.⁵⁷
- Other facts support the conclusion that Sunbeauty did not make a *bona fide* sale.⁵⁸
- Sunbeauty had not sold any mattresses prior to 2018 and the timing of this in relation to the antidumping duty petition indicates that Sunbeauty’s sale was aimed at avoiding the antidumping duty order.⁵⁹
- Sunbeauty failed to report all its expenses, the chronology of the sale does not reconcile, and other circumstances make the sale unusual.⁶⁰

⁴⁷ *Id.* at 5.

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 6-7.

⁵⁰ *Id.* at 7.

⁵¹ *Id.*

⁵² *Id.* at 8.

⁵³ *Id.*

⁵⁴ *Id.* at 9-10.

⁵⁵ *Id.* at 10.

⁵⁶ *Id.*

⁵⁷ *Id.* at 11.

⁵⁸ *Id.* at 12.

⁵⁹ *Id.* at 12-13.

⁶⁰ *Id.* at 13-15.

- Sunbeauty’s unusual reporting, including the inconsistencies and deficiencies, calls into question the reasonableness of the expenses associated with the transaction.⁶¹
- The importer misreported the profitability of the sale.⁶²
- Company X and Sunbeauty incurred expenses that were not reported to Commerce.⁶³
- Commerce should consider the incomplete reporting in this case as a factor in support of finding that Sunbeauty’s sale was not a *bona fide* sale.⁶⁴
- Absent a *bona fide* sale, Commerce should rescind the review and impose the China-wide entity cash deposit rate on Sunbeauty.⁶⁵

Commerce’s Position:

In conducting *bona fide* sales analyses, Commerce employs a totality of the circumstances test.⁶⁶ When calculating export price, pursuant to the Act, Commerce excludes sales that are not *bona fide*.⁶⁷ By statute, Commerce examines seven factors to determine whether a sale is *bona fide*.⁶⁸ We provided an initial analysis of the seven factors in the Preliminary *Bona Fides* Memorandum. After reviewing the evidence and arguments presented by the parties, we continue to determine that Sunbeauty did not make a *bona fide* sale during the POR.

As an initial matter, regarding administrative reviews where a respondent makes a single sale during a POR or when an NSR involves a single sale, Commerce is not obligated to overlook evidence suggesting that the sale “was made solely for the purpose of establishing a new antidumping deposit rate, without regard to the commercial reasonableness of the sale.”⁶⁹ We emphasize that the artificial appearance of a respondent’s sale is a result of the respondent’s own choices. The Court of International Trade (CIT) has previously explained that “the artificial appearance of the {single} U.S. sale” in *Tianjin* was the respondent’s “fault.”⁷⁰ The CIT goes on to explain:

In one-sale reviews, there is, as a result of the seller's choice to make only one shipment, little data from which to infer what the shipper's future selling practices would look like. This leaves the door wide to the possibility that the sale may not,

⁶¹ *Id.* at 15.

⁶² *Id.* at 16.

⁶³ *Id.* at 17.

⁶⁴ *Id.* at 18.

⁶⁵ *Id.*

⁶⁶ See *Haixing Jingmei Chem. Prods. Sales Co. v. United States*, 357 F.Supp.3d 1337, 1344 (CIT 2018) (*Haixing*).

⁶⁷ See, e.g., *Novolipetsk Steel Pub. Joint Stock Co. v. United States*, 483 F. Supp. 3d 1281, 1287 (CIT 2020); *Shanghai Sunbeauty Trading Co., Ltd. v. United States*, Ct. No. 17-00089, Slip Op. 18-111 at 9 (CIT 2018) (*Sunbeauty*).

⁶⁸ See section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act) (setting out the factors that Commerce considers to determine whether a sale is *bona fide* in the context of an NSR). The factors include the following: (I) the price of the sale; (II) whether the sale was made in commercial quantities; (III) the timing of the sale; (IV) the expenses arising from the sale; (V) whether subject merchandise was resold at a profit; (VI) whether the sale was made on an arm’s-length basis; and (VII) any other factor that Commerce considers to be relevant to whether the sale at issue is “likely to be typical of those the exporter or producer will make after the completion of the review.” *Id.*

⁶⁹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1343 (CIT 2005).

⁷⁰ *Id.*

in fact, be typical, and that any resulting antidumping duty calculation would be based on unreliable data.⁷¹

Indeed, while single sales are not “inherently commercially unreasonable,” Commerce nevertheless will carefully scrutinize such sales “to ensure that new shippers do not unfairly benefit from unrepresentative sales.”⁷² Further, the court has held that “the decision to compare price and quantity data by means of the average method or the range method depends on the specific facts of each case.”⁷³

We note that the discussion below is limited to public information. We have addressed and discussed specific proprietary information in an accompanying memorandum.⁷⁴

(1) The Price of the Sale

In the Preliminary *Bona Fides* Memorandum, we established that Sunbeauty’s sales price for its mattress was atypical. Pursuant to section 751(a)(2)(B)(iv)(I) of the Act, Commerce examines the price associated with a sale, or sales, under review and considers whether the price is typical of industry practice or a respondent’s pricing practices.⁷⁵ If Commerce determines that the price of sales under review are atypical of a respondent’s future sales, then the sale, in conjunction with other factors under section 751(a)(2)(B) of the Act, may be considered non-*bona fide*.⁷⁶ In arriving at its determination, the court has sustained Commerce’s use of average unit values derived from Customs data as a “useful tool for comparison because it provides a fair representation of prices set by the market.”⁷⁷ Commerce may, in the course of a *bona fides* analysis, compare a respondent’s selling price during the POR to sales made by other exporters during the POR, or to a respondent’s own sales, whether these sales were made to third country markets or to the United States after the POR.⁷⁸

In the instant review, we compared Sunbeauty’s sale to CBP AUV data, sales price data from the investigation, and price data from Sunbeauty’s business practices and domestic sales because the record lacks data regarding actual sales prices from other exporters during the POR and Sunbeauty presented a single sale for review.⁷⁹ Sunbeauty argues that the data Commerce used are invalid or need adjustment in order to be a meaningful point of comparison.

⁷¹ *Id.* (citing *Tianjin Tiancheng Pharm. Co. v. United States*, 366 F. Supp. 2d 1246, 1263 (CIT 2005) (*Tianjin*)).

⁷² *See Tianjin*, 366 F. Supp. 2d at 1263.

⁷³ *See Sunbeauty*, Ct. No. 17-00089, Slip Op. 18-111 at 16-17.

⁷⁴ *See* Proprietary Information Memorandum.

⁷⁵ *See Tianjin*, 366 F. Supp. 2d at 1250-51.

⁷⁶ *Id.*; *Am. Silicon Techs v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000); *Windmill Int’l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1307 (CIT 2002).

⁷⁷ *See Sunbeauty*, Ct. No. 17-00089, Slip Op. 18-111 at 18; *Jinxiang Chengda Imp. & Exp. Co. v. United States*, Ct. No. 11-00144, Slip Op. 2013-40 at 9-10 (CIT 2013).

⁷⁸ *See Tianjin*, 366 F. Supp. 2d at 1250-58; *see also Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People’s Republic of China*, 68 FR 62053 (October 31, 2003), and accompanying Issues and Decision Memorandum at Comment 1.

⁷⁹ *See* Memorandum, “Request for a New Shipper Review of Mattresses from the People’s Republic of China: Shanghai Sunbeauty Trading Co., Ltd.,” dated July 29, 2020 at Attachment (CBP Data); *see also* Memorandum, “Placing Data on the Record,” dated February 1, 2021 (Investigation Data); Sunbeauty’s Letter, “Sunbeauty Section

Initially, Sunbeauty argues that Commerce has a practice of comparing “a respondent’s selling price during the POR to sales made by other exporters during the POR, or to a respondent’s own sales, whether these sales were made to third country markets or to the United States after the POR.”⁸⁰ Although Commerce has compared a respondent’s selling price during the POR to sales made by other exporters during the POR and to a respondent’s sales to third countries and the United States after the POR, Commerce has not limited its practice to only comparing a new-shipper respondent’s sales to these other types of sales. Rather, as explained above, in conducting *bona fide* sales analyses, Commerce employs a totality of the circumstances test,⁸¹ and may consider other data pertaining to price on the record. Moreover, in this NSR, Sunbeauty did not provide third-country sales for comparison and there are no data available from other respondents that cover the POR. Therefore, we examined a number of different sources of data including Sunbeauty’s domestic sales.

In the Preliminary *Bona Fides* Memorandum, we determined that Sunbeauty’s pricing was atypical considering several sources of data. We examined CBP AUV data and compared Sunbeauty’s AUV and sales price to the AUVs of other entries under the same HTS subheading during the same POR. We also compared Sunbeauty’s sales price to mattress sales prices from the mandatory respondents in the antidumping duty investigation. Specifically, we compared Sunbeauty’s mattress sale to sales of similarly sized mattresses made by Healthcare and Zinus. Lastly, we considered Sunbeauty’s sales prices of the same type of mattress in the Chinese market. We determined that each comparison demonstrated that Sunbeauty’s sales price was atypical.

Commerce determines that the CBP AUV data provide a useful point of comparison and, consistent with other information on the record, indicate that Sunbeauty’s sales price is atypical. Sunbeauty argues that the HTS subheading from which the data are derived encompasses Sunbeauty’s product and other dissimilar products, therefore rendering any comparison unsuitable.⁸² The AUV data are useful because the data provide a broad picture confirming that Sunbeauty’s sales price is atypical. In spite of the range of products covered by the HTS subheading, Sunbeauty’s AUV and sales price stand out. The AUV data, which covers imports of mattresses from China during the POR, do not contain a single entry of an AUV within the range of Sunbeauty’s AUV.⁸³ Nevertheless, we examined other available information on the record, such as pricing data from the antidumping duty investigation and Sunbeauty’s pricing in the domestic market, as further evidence that Sunbeauty’s sales price is atypical. Sunbeauty’s

A and Appendix XI Questionnaire Responses,” dated August 21, 2020 at Exhibit A-5 and Exhibit A-8 (Sunbeauty’s Section A Response); Sunbeauty’s Letter, “Sunbeauty Sections C & D Questionnaire Responses,” dated September 17, 2020 at VI-2 (Sunbeauty’s Section C-D Response); Sunbeauty’s Letter, “Sunbeauty Supplemental Section A and Appendix XI Questionnaire Responses,” dated September 28, 2020 at Exhibit 11 (Supplemental Section A Response).

⁸⁰ See Sunbeauty’s Case Brief at 6 (citing *Fresh Garlic From the People’s Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review*, 84 FR 27585 (June 13, 2019), and accompanying memorandum at 5).

⁸¹ See *Haixing*, 357 F.Supp.3d at 1344.

⁸² Sunbeauty has repeatedly asserted that its product is unique and is a “customized mattress.” See Sunbeauty’s Letter, “Sunbeauty’s 2nd Comments on Placing Data on the Record Memorandum,” dated February 16, 2021 at 4 (Sunbeauty’s 2nd Price Data Comments).

⁸³ See Proprietary Information Memorandum at 2.

argument that the CBP data is inapposite because AUVs may differ from actual sale prices is addressed in the Proprietary Information Memorandum.

Sunbeauty's objections to the sales price data from the investigation are also unpersuasive. First, Sunbeauty argues that Healthcare's and Zinus' mattresses are not comparable to Sunbeauty's because of the materials, production cost, and size of Sunbeauty's mattress, *i.e.*, Sunbeauty's mattress is "customized."⁸⁴ In other words, Sunbeauty argues that its single mattress cannot be properly compared to the data from the investigation.

Generally speaking, Commerce compares reliable price information on the record of a proceeding (*i.e.*, CBP data and data from the investigation) to a respondent's sales price. Here, Commerce compared the CBP data and investigation data to the price of Sunbeauty's single sale because there are no other credible data on the record. The data from the investigation are verified and, in general, provide a baseline of information regarding mattress sales in the ordinary course of trade. Although Sunbeauty's product characteristics may differ in some respects from the products in the investigation data, that is not a reason to disregard the data entirely. Rather, Commerce's analysis in the Preliminary *Bona Fides* Memorandum narrowed the comparison characteristics by mattress size (an important factor in price), and Commerce paid special attention to the highest priced sales in making comparisons to Sunbeauty's sale. Even after narrowing the comparison criteria, Sunbeauty's sales price remains clearly atypical. Discussing this point in more detail involves proprietary information, so we address this, and other points, in a separate memorandum.⁸⁵

Next, Sunbeauty argues that the investigation data should be categorically excluded because Commerce previously determined that both Healthcare and Zinus were dumping.⁸⁶ Sunbeauty argues that the investigation sales were made at less than fair value and not appropriate for comparison. However, dumping margins are based on weighted averages, meaning that it cannot be assumed that *every sale* in the investigation data was made at less than fair value. Further, as explained in our preliminary analysis, Sunbeauty's sales price is atypical, considering the highest priced sales in each database. Additionally, Sunbeauty's price would continue to be atypical even if Commerce increased the average sales price by the weighted-average dumping margin.⁸⁷ Thus, Sunbeauty's argument is not persuasive.

Furthermore, the alternative data for comparison provided by Sunbeauty are not credible. Sunbeauty argues that customized mattresses range as high as \$395,000 in the U.S. market and provides as evidence an article from an online blog.⁸⁸ Initially, it remained unclear, as explained in the Proprietary Information Memo, that Sunbeauty's mattress was customized and the features that indicate the mattress is custom. The mattresses in the article are custom because they are made of "natural materials, including horse hair, wool, cotton and flax" and are "engineered to feature higher springs and more coils" as well as the service of "a team of employees" that "flip and massage the mattress three to five times a year." There is no record evidence demonstrating

⁸⁴ See Sunbeauty's Case Brief at 4-5; *see also* Sunbeauty's 2nd Price Data Comments at 4.

⁸⁵ See Proprietary Information Memorandum at 2-3.

⁸⁶ See Sunbeauty's Case Brief at 6.

⁸⁷ See Proprietary Information Memorandum at 3; *see also* Preliminary *Bona Fides* Analysis at 5.

⁸⁸ See Sunbeauty's Case Brief at 5 (citing Sunbeauty's 2nd Price Data Comments at Exhibit 5).

that Sunbeauty's mattress is similar to the allegedly customized mattresses in the article or that Sunbeauty provides comparable services. Moreover, the prices described in Exhibit 5 of Sunbeauty's February 16, 2021, submission are anecdotal and unverifiable – the exhibit does not include primary sources for the pricing data and does not contain any actual sales prices.⁸⁹ Additionally, some of the pricing involves mattresses produced in countries other than the United States and China, *e.g.*, Sweden, Portugal, and England.⁹⁰ Sunbeauty attempts to distinguish the verified information gathered during an antidumping duty investigation (*i.e.*, Healthcare and Zinus' sales) but Sunbeauty does not justify or explain why Commerce should instead rely upon pricing information obtained from blog posts on the internet.

Sunbeauty argues that “latex is a more expensive material than innersprings and foam” accounting for why the price of its mattress is greater than that of Healthcare and Zinus in the investigation.⁹¹ The price of different materials cannot sufficiently explain Sunbeauty's atypical sales price. Sunbeauty's purchase price for the “customized” mattress that it sold in the U.S. market is not significant enough to account for Sunbeauty's atypical sales price. Because Sunbeauty's purchase price is proprietary information, we have discussed the price in a separate memorandum.⁹²

We also continue to determine that Sunbeauty's sales price is atypical considering Sunbeauty's own business practices.⁹³ Sunbeauty argues that differences between the Chinese market and export sales to the U.S. market render Sunbeauty's pricing in the Chinese market an inapt point of comparison for its U.S. sale.⁹⁴ Regardless of some differences between the markets, Sunbeauty's sales price is still atypical.⁹⁵ Sunbeauty's sales prices in the Chinese domestic market are a relevant comparison because Sunbeauty provided limited data on the record in this NSR – Sunbeauty presented only one sale for review and did not report any third country sales. Therefore, we examined Sunbeauty's domestic sales prices as another data point in the totality of the circumstances that we considered in determining that Sunbeauty's U.S. sales price is atypical.

Additionally, some of Sunbeauty's arguments undermine its own case. Sunbeauty highlights Customer X's inexperience and unfamiliarity with the Chinese market as reasons that allowed Sunbeauty to sell its mattress at a higher price.⁹⁶ Thus, Sunbeauty's own words indicates that its sales price may not be representative of its future sales.

Therefore, for the above reasons, we continue to find that the data on which we relied for comparison are appropriate. Overall, considering a totality of the circumstances and the

⁸⁹ See Sunbeauty's 2nd Price Data Comments at Exhibit 5.

⁹⁰ *Id.*

⁹¹ See Sunbeauty's Case Brief at 4.

⁹² See Proprietary Information Memorandum at 3-4.

⁹³ See Preliminary *Bona Fides* Analysis at 5.

⁹⁴ See Sunbeauty's Case Brief at 6-7.

⁹⁵ See Proprietary Information Memorandum at 3.

⁹⁶ See Sunbeauty's Case Brief at 7 (“Customer X may not be familiar with the Chinese market price of mattress as Sunbeauty's domestic customers do {sic}. Such information asymmetry partially decreases the Customer X's bargaining power during the negotiation with Sunbeauty, and facilitates Sunbeauty to sell at a higher price compared to its domestic sales.”).

evidence on the record, we continue to determine that Sunbeauty's sales price is atypical and is not likely to be representative of future sales.

(2) Whether the Sale was Made in Commercial Quantities

Pursuant to section 751(a)(2)(B)(iv)(II) of the Act, Commerce considers the quantity of the sale at issue in determining whether a sale is *bona fide*. While the quantity of a sale may not be sufficient in and of itself, to warrant a finding that a sale is not *bona fide*, when analyzed together with the totality of the circumstances of the sale, the quantity of the sale informs Commerce's decision as to whether a sale is *bona fide*.⁹⁷ In this NSR, we examined a single sale from a single respondent. Further, as explained above, we compared Sunbeauty's sale to CBP data, data from the investigation, and data of Sunbeauty's sales in the home market.⁹⁸

Sunbeauty argues that its business practices in the Chinese market should not be compared to export sales due to the significant amount of effort it expended to secure the single export sale at issue.⁹⁹ Due to the proprietary nature of the relevant CBP data and other proprietary data, Sunbeauty's arguments are addressed in a separate proprietary memorandum.¹⁰⁰

Therefore, based on CBP data, data from the investigation, and Sunbeauty's own business practices, and for the reasons explained in the proprietary memorandum, we continue to determine that Sunbeauty did not make a sale in the usual commercial quantities.

(3) Whether the Transaction was Made on an Arm's-Length Basis

Pursuant to section 751(a)(2)(B)(iv)(VI) of the Act, Commerce considers whether a respondent's sale, or sales, were made on an arm's-length basis in determining whether a sale is *bona fide*. In our preliminary determination, we found that conflicting evidence on the record raised doubts regarding whether Sunbeauty's sale was made at arm's length.¹⁰¹

Sunbeauty challenges Commerce's determination on this factor by arguing that its price and sale terms reflect an arm's-length transaction.¹⁰² Specifically, Sunbeauty argues that the price it granted Customer X was the result of "professional price negotiation" and that its sales term was common and commercially reasonable.¹⁰³ Due to the proprietary nature of the data we relied on, we have addressed Sunbeauty's arguments in a separate proprietary memorandum.¹⁰⁴

⁹⁷ See *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439 (January 10, 2003), and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews*, 68 FR 52746, 52747 (September 5, 2003).

⁹⁸ See CBP Data; Investigation Data; Sunbeauty's Section A Response at Exhibit A-5 and Exhibit A-8; Sunbeauty's Section C-D Response at VI-2; Supplemental Section A Response at Exhibit 11.

⁹⁹ See Sunbeauty's Case Brief at 8.

¹⁰⁰ See Proprietary Information Memorandum at 4-5.

¹⁰¹ See Preliminary *Bona Fides* Analysis at 8-9.

¹⁰² See Sunbeauty Case Brief at 9-10.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 5-6.

(4) Other Relevant Factors Regarding Whether the Sale is Typical of Future Sales

In our Preliminary *Bona Fides* Memorandum, we identified other information indicating that Sunbeauty's sale will not likely be typical of future sales.¹⁰⁵ Sunbeauty presented additional arguments relating to these other factors. However, due to the proprietary nature of the data we relied on, we have addressed Sunbeauty's arguments in a separate proprietary memorandum.¹⁰⁶

(5) Factors Not Discussed

We continue to rely on our determination in the Preliminary *Bona Fides* Memorandum regarding the timing of the sale, the expenses arising from the transaction, and whether the goods were resold at a profit.¹⁰⁷ As we explained in our Preliminary *Bona Fides* Memorandum, the factors of price and quantity were more significant than the other factors and provided a sufficient basis to determine that Sunbeauty's sale was not a *bona fide* sale.¹⁰⁸ Our conclusion regarding the three factors – the timing of the sale, the expenses arising from the transaction, and whether the goods were resold for a profit – is unchanged from the preliminary results.

(6) Conclusion

Based on the totality of the circumstances, we continue to determine that Sunbeauty did not make a *bona fide* sale during the POR, consistent with the reasoning and determination in the Preliminary *Bona Fides* Memorandum.¹⁰⁹ Specifically, we continue to place significant weight on Sunbeauty's atypical sales price. The price of an item is particularly important when an NSR is based on a single sale, because the sale provides the only information upon which a separate dumping margin would be based.¹¹⁰ Additionally, other factors are also important to our determination. For instance, Sunbeauty's sales quantity was unusually low, indicating that its sale in this NSR may not be representative of future sales. We also placed weight on Sunbeauty's inexperience in exporting mattresses to the U.S. market, its recent shift to mattress sales, its lack of apparent U.S. business strategy, and its risky sales terms to Customer X – all of these provide strong indications that Sunbeauty's sale is atypical and not representative of future sales.

In considering the totality of the circumstances, the factors listed above sufficiently demonstrate that Sunbeauty's sale is not a *bona fide* sale. Because it is not appropriate to base a dumping margin on that non-*bona fide* sale, we recommend that this NSR be rescinded.

¹⁰⁵ See Preliminary *Bona Fides* Memorandum at 9.

¹⁰⁶ See Proprietary Information Memorandum at 6-8.

¹⁰⁷ See Preliminary *Bona Fides* Memorandum at 6-8.

¹⁰⁸ *Id.* at 11-12.

¹⁰⁹ *Id.*

¹¹⁰ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review; 2013-2014*, 80 FR 55090 (September 14, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If accepted, we will publish these final results of this NSR in the *Federal Register*.



Agree



Disagree

6/7/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance